MONTANA ADMINISTRATIVE REGISTER

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ISSUE NO. 6

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through III pertaining to definitions, out-of-state state-chartered bank or national bank seeking to exercise fiduciary powers in Montana, and out-of-state nonbank trust companies seeking to exercise fiduciary powers in Montana and the repeal of ARM 2.59.136 pertaining to fiduciary foreign trust companies	))))))))))	NOTICE OF PROPOSED ADOPTION AND REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On May 11, 2024, the Department of Administration (department) proposes to adopt and repeal the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on April 3, 2024, to advise us of the nature of the accommodation that you need. Please contact Heather Hardman, Department of Administration, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2922; Montana Relay Service 711; facsimile (406) 841-2930; or by email to banking@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: Section 32-1-1007, MCA, requires the department to adopt rules to regulate the conduct of business in Montana by foreign (out-of-state) trust companies.

In Montana, trust companies are banks. Pursuant to Title 32, chapter 1, part 10, MCA, a number of out-of-state state-chartered banks operate as fiduciary foreign trust companies in Montana. Prior to 2022, the department did not allow out-of-state nondepository (nonbank) trust companies to do business in Montana.

In 2022, a Montana district court ruled that nonbank trust companies are allowed to conduct business in Montana as fiduciary foreign trust companies under Title 32, chapter 1, part 10, MCA. *First Trust Company, LLC v. Montana Department of Administration, Division of Banking and Financial Institutions*, Mont. First Jud. Dist. Ct. Cause No. DDV-2021-1256 (Order).

As no authority exists under Montana law to charter or regulate a nonbank trust company, the department is unable to require chartering or licensing of a nonbank trust company. The department has no statutory authority to examine or supervise any nonbank trust company doing business in Montana.

Montana's sole authority over foreign trust companies doing business in Montana is found in Title 32, chapter 1, part 10, MCA. These provisions allow

foreign trust companies to do business in Montana under rules adopted by the department.

Since the Order applied the fiduciary foreign trust company statutes to cover nonbank trust companies, the department must implement 32-1-1007, MCA, by rule in order to create a process for both bank and nonbank trust companies to apply to conduct business in Montana as a fiduciary foreign trust company, as well as a process to establish trust representative offices in Montana.

4. The rules proposed to be adopted are as follows:

NEW RULE I DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Good standing" means the entity is not subject to a supervisory directive, corrective action order, conservatorship, or the equivalent, from a state or federal regulator, and has not had its authority to do business in its home state, any other state, or a foreign jurisdiction suspended or revoked.

(2) "Home state" means the state where a bank or nonbank trust company is chartered.

(3) "Home state regulator" means the supervisory agency of the home state of a bank or nonbank trust company.

(4) "Nonbank trust company" means a foreign non-depository trust company.

(5) "Primary regulator" means the state or federal regulatory agency tasked with being the main supervisory authority of a financial institution.

(6) "Principal office" means an office of a fiduciary foreign trust company that is located in Montana and undertakes activities set forth in 32-1-1002, MCA.

(7) "Trust representative office" means an office of a fiduciary foreign trust company, other than a principal office, located in Montana at which the fiduciary foreign trust company performs activities ancillary to its fiduciary business, but does not engage in any of the activities specified in 32-1-1002, MCA. Examples of ancillary activities include advertising, marketing, and soliciting for fiduciary business; contacting existing or potential customers, answering questions, and providing information about matters related to their accounts; acting as a liaison between the trust office and the customer (such as forwarding requests for distribution or changes in investment objectives, or forwarding forms and funds received from the customer); and inspecting or maintaining custody of fiduciary assets or holding title to real property. A trust representative office is not a "branch" for purposes of 32-1-372, MCA, unless it is also an office at which deposits are received, checks paid, or money lent.

(8) "Well capitalized" means the fiduciary foreign trust company is well capitalized under the existing standards in the home state.

AUTH: 32-1-1007, MCA
IMP: 32-1-1002, 32-1-1007, MCA

STATEMENT OF REASONABLE NECESSITY: Definitions are necessary to provide the meaning of specific terms used throughout the rules. The definition of "good standing" is needed since a nonbank trust company in good standing in

another state can apply to be a fiduciary foreign trust company in Montana. "Good standing" as defined here covers the most common types of supervisory actions that a regulator may take against an entity. If an entity were subject to any of these regulatory actions, it would be indicative of safety and soundness concerns at the institution. It would not be in the best interests of Montanans to allow such an entity to do business in Montana.

"Trust representative office" and "principal office" are defined consistent with industry and regulatory norms. If the fiduciary foreign trust company is a bank, it is necessary to distinguish a branch (which accepts deposits) from a principal office and from a trust representative office.

"Well capitalized" is defined by the standards that are enforced by the primary regulator that charters or licenses the fiduciary foreign trust company. Since Montana has no standards for capitalization of a nonbank trust company, it proposes to use the standards that exist in the chartering or licensing state.

NEW RULE II OUT-OF-STATE STATE-CHARTERED BANK OR NATIONAL BANK SEEKING TO EXERCISE FIDUCIARY POWERS IN MONTANA (1) An out-of-state state-chartered or national bank that seeks to act as a fiduciary foreign trust company in Montana must provide:

(a) the Fiduciary Foreign Trust Company Application, October 30, 2023, version, which is available on the department's website at banking.mt.gov;

(b) certification from the primary regulator stating:

(i) that the bank is lawfully chartered;

(ii) that the bank is operating in good standing;

(iii) that banking or trust corporations or corporations organized under the laws of Montana or national banking associations that maintain their principal offices in Montana are permitted to act as trustees, guardians, or conservators in the state in which the applicant maintains its principal office; and

(c) the physical location of any principal or trust representative office located in Montana.

AUTH: 32-1-1007, MCA
IMP: 32-1-1002, 32-1-1007, MCA

STATEMENT OF REASONABLE NECESSITY: NEW RULE II is necessary in the case of an out-of-state state-chartered bank or a national bank seeking to exercise fiduciary powers in Montana to ensure the bank complies with 32-1-1001, MCA, in providing a copy of the charter from their primary regulator. NEW RULE II is also necessary to ensure the foreign trust company complies with 32-1-1002, MCA, by providing proof that a Montana state-chartered bank or trust company would be allowed reciprocity to operate as a fiduciary trust company in the state in which the out-of-state bank or national bank has its principal office.

In addition, pursuant to Title 32, chapter 1, part 10, MCA, the department proposes to require, as a condition of doing business in Montana, that the primary regulator certify that the foreign bank is in good standing. This is necessary to ensure that the primary regulator of the institution certifies that the institution is not

operating in an unsafe or unsound manner prior to the institution doing business in Montana.

NEW RULE III OUT-OF-STATE NONBANK TRUST COMPANIES SEEKING TO EXERCISE FIDUCIARY POWERS IN MONTANA (1) A nonbank trust company that seeks to act as a fiduciary foreign trust company in Montana must provide:

(a) the Fiduciary Foreign Trust Company Application, October 30, 2023, version, which is available on the department's website at banking.mt.gov;

(b) certification from the primary regulator stating:

(i) that the nonbank trust company is lawfully chartered or licensed;

(ii) that the nonbank trust company is in good standing in the chartering or licensing state;

(iii) that the nonbank trust company is well capitalized under the standards that exist in the home state; and

(iv) that banking or trust associations or corporations organized under the laws of Montana or national banking associations that maintain their principal offices in Montana are permitted to act as trustees, guardians, or conservators in the state in which the fiduciary foreign trust company maintains its principal office; and

(c) the physical location of any principal or trust representative office located in Montana.

AUTH: 32-1-1007, MCA
IMP: 32-1-1002, 32-1-1007, MCA

STATEMENT OF REASONABLE NECESSITY: Unlike a bank, a nonbank trust company would not have FDIC insurance for their custodial funds. FDIC insurance covers funds on deposit in a bank up to $250,000. Since nonbank trust companies do not have FDIC insurance, and the department has no authority to supervise or examine these entities, additional regulatory scrutiny is needed to ensure that these entities are safe and sound. Therefore, in addition to the items that a bank must provide in order to be allowed to do business in Montana, it is necessary for the department to require a nonbank trust company to provide certification from the chartering or licensing state that the entity is well-capitalized under the standards that exist in that state. This will ensure that the chartering or licensing state has examined the entity in question and certified that they are well capitalized. This will help to protect Montanans who choose to do business with these entities, to the extent possible under current law.

5. The department proposes to repeal the following rule:

2.59.136 FOREIGN FIDUCIARY TRUST COMPANY

AUTH: 32-1-1007, MCA
IMP: 32-1-1002, 32-1-1007, MCA

STATEMENT OF REASONABLE NECESSITY: It is necessary to repeal ARM 2.59.136 because its substance has been incorporated into NEW RULE III.

6. Concerned persons may present their data, views, or arguments concerning the proposed action to the person listed in paragraph two. Comments must be received no later than 5:00 p.m., April 19, 2024.

7. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in paragraph two above no later than 5:00 p.m., April 3, 2024.

8. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Montana currently has six fiduciary foreign trust companies. Ten percent of those directly affected is approximately one.

9. An electronic copy of this proposal notice is available through the department's website at doa.mt.gov/administrative rules. The department strives to make its online version of the notice conform to the official version, but advises all concerned persons that if a discrepancy exists between the official version and the department's online version, only the official text will be considered. In addition, although the department works to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

10. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list must make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the person listed in paragraph two or may be made by completing a request form at any rules hearing held by the department.

11. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

12. The department has determined that under 2-4-111, MCA, the proposed adoption and repeal of the above-stated rules will not significantly and directly impact small businesses.

By: /s/ Misty Ann Giles
Misty Ann Giles, Director
Department of Administration

By: /s/ Don Harris
Don Harris, Rule Reviewer
Department of Administration

Certified to the Secretary of State March 12, 2024.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the amendment of ARM 6.6.509 pertaining to Required Disclosure Provisions in Medicare Supplements	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) proposes to amend the above-stated rules.

2. CSI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require accommodation, contact CSI no later than 5:00 p.m. on April 2, 2024, to advise us of the nature of the accommodation that you need. Please contact Laura Shirtliff, Creative and Digital Services Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-3326148; fax (406) 444-3413; TDD (406) 444-3246; or e-mail csi@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

6.6.509 REQUIRED DISCLOSURE PROVISIONS (1) through (9) remain the same.

(10) The CSI adopts and incorporates by reference the National Association of Insurance Commissioners (NAIC) Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act~~,~~ (MDL-651), ~~page 651-53 through page 651-104, which was last adopted in the 1st quarter of 2017,~~ page 651-42 through page 651-84, which was last adopted in 2023 ~~and is available online at http://www.naic.org/prod_serv_model_laws.htm~~. Specifically, those pages of the NAIC MDL-651 set forth benefit charts, disclosures to insureds, and outlines of coverage for 2010 or 2020 Medicare supplement plans, as applicable, that must be included in the outline of coverage provided to the consumer in the same order as set forth in NAIC MDL-651, except that asterisks can be represented numerically and asterisked text appearing at the top or beginning of a document can instead appear at the bottom or end of the document. Copies of the NAIC MDL-651 (2023) are ~~also~~ available for public inspection online at http://www.naic.org/prod_serv_model_laws.htm and at the Office of the Commissioner of Securities and Insurance, Montana State Auditor, Legal Department, 840 Helena Avenue, Helena, Montana 59601. Persons obtaining a copy of these forms must pay the cost of providing such copies.

(11) and (12) remain the same.

AUTH: 33-1-313, 33-22-904, 33-22-907, MCA

IMP: 33-15-303, 33-22-902, 33-22-904, 33-22-907, MCA

4. REASON: The Commissioner of Securities and Insurance, Montana State Auditor, Troy Downing (commissioner) is the statewide elected official responsible for administering the Montana Insurance Code and regulating the business of insurance. The National Association of Insurance Commissioners (NAIC) is an organization of insurance regulators from the 50 states, the District of Columbia, and the U.S. Territories; it provides a forum for the development of uniform policy and regulation when uniformity is appropriate. To ensure uniformity with other states, the incorporation by reference of this portion of the NAIC Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act (MDL-651) has been updated to adopt the most recent updates to the referenced forms, disclosures, and outlines.

Further, the NAIC MDL-651 uses seriatim asterisks (*, **, ***, etc.) to note internal references, and inconsistently puts the referenced text not just at the bottom (or end) of a document but also and alternatively at the top (or beginning). To lessen confusion, the commissioner proposes to allow seriatim asterisks to be replaced with numbers and to allow the location of the asterisked or numbered text to be moved to the bottom of a page (footnote) or end of a document (endnote).

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Laura Shirtliff, Creative and Digital Services Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3413; TDD (406) 444-3246; or e-mail CSI@mt.gov, and must be received no later than 5:00 p.m., April 19, 2024.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Laura Shirtliff at the above address no later than 5:00 p.m., April 19, 2024.

7. If the agency receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed actions; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 9 persons based on 84 companies having made an annual rate filing to write Medicare Supplement insurance in 2023.

8. CSI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing

preference is noted in the request. Written requests may be mailed or delivered to the contact person in paragraph 6 or made by completing a request form at any rules hearing held by CSI.

9. An electronic copy of this proposal notice is available through the Secretary of State's website at http://sosmt.gov/ARM/Register.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, CSI has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Kirsten Madsen
Kirsten Madsen
Rule Reviewer

/s/ Ole Olson
Ole Olson
Chief Legal Counsel
Commissioner of Securities and Insurance,
Office of the Montana State Auditor

Certified to the Secretary of State March 12, 2024.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.101.302 and the repeal of ARM 8.101.202 and 8.101.203 pertaining to the submission and review of applications for funding under the Coal Board	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On April 11, 2024, at 10:00 a.m., the Department of Commerce will hold a public hearing via Zoom to consider the proposed amendment and repeal of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

a. Video: https://mt-gov.zoom.us/webinar/register/WN_Uq3_IlNwQYSM-s-xjgCdRQ

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., April 9, 2024, to advise us of the nature of the accommodation that you need. Please contact Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2596; TDD (406) 841-2702; facsimile (406) 841-2771; or e-mail to docadmimistrativerules@mt.gov.

3. The rule proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

8.101.302 APPLICATION FORM (LIF 1-75) (1) The purpose of the application form is to evaluate applicants for coal impact assistance and to establish priorities among those who may qualify for grants. Items to be considered include, but are not limited to, a description of the proposed project, proposed budget, projected completion date, the project's relationship to coal development, the applicant's budget, documentation of past and current local financial effort, and current or on-going planning efforts related to the orderly management of the existing or contemplated growth or decline of coal impacts~~, and documentation of citizen participation~~.

(2) Applications will be evaluated based on the five criteria listed in ARM 8.101.301~~, and must include documentation of a completed environmental review process~~. The application shall be considered by the Coal Board during the next scheduled quarterly meeting after receipt of the completed application, and either be approved, denied, or tabled pending submittal of additional information to the Coal Board. The application form is available online.

(3) and (4) remain the same.

(5) Coal impact grant funds used for the preparation of plans, studies, analyses, or necessary research for the preparation of a preliminary engineering report must meet the requirements of the most current Coal Board application. This application is available ~~Uniform Application for Montana Public Facility Projects. Coal impact grant funds used for the preparation of a preliminary architectural report must meet the requirements described in the Coal Impact Grant Application. This application is available~~ online at ~~http://comdev.mt.gov/Boards/Coal~~ https://comdev.mt.gov/Programs-and-Boards/Montana-Coal-Board/Planning-and-Project-Grants.

AUTH: 90-6-205, MCA
IMP: 90-6-208, MCA

REASON: It is reasonably necessary to amend this rule with the passage of House Bill 795 (HB 795) in the 68th Legislative session. The Coal Board is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, MCA, when authorizing grants in certain circumstances set by statute. The department has updated the Coal Board application to reflect the changes to the program.

4. The department proposes to repeal the following rules:

8.101.202 INCORPORATION BY REFERENCE OF RULES FOR IMPLEMENTING MEPA

AUTH: 90-6-205, MCA
IMP: 75-1-201, 75-1-202, MCA

REASON: It is reasonably necessary to amend this rule with the passage of House Bill 795 (HB 795) in the 68th Legislative session. The Coal Board is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, MCA, when authorizing grants in certain circumstances set by statute. The department has updated the Coal Board application to reflect the changes to the program.

8.101.203 CATEGORICAL EXCLUSIONS FROM ENVIRONMENTAL REVIEW PROCESS

AUTH: 90-6-205, MCA
IMP: 75-1-201, MCA

REASON: It is reasonably necessary to amend this rule with the passage of House Bill 795 (HB 795) in the 68th Legislative session. The Coal Board is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, MCA, when authorizing grants in certain circumstances set by statute. The department has updated the Coal Board application to reflect the changes to the program.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Department of Commerce, Community MT Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana, 59620-0523; by facsimile to (406) 841-2771, or e-mail to docadministrativerules@mt.gov, and must be received no later than 5:00 p.m., April 19, 2024.

6. The Office of Legal Affairs has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501, by fax to (406) 841-2701, by e-mail to docadministrativerules@mt.gov, or by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

MONTANA COAL BOARD
Pat Lorello, Chair

/s/ John Semmens
John Semmens
Rule Reviewer

/s/ Mandy Rambo
Mandy Rambo
Deputy Director
Department of Commerce

Certified to the Secretary of State on March 12, 2024.

BEFORE THE FISH AND WILDLIFE COMMISSION
AND THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 12.9.101 Big Game Management Policy	)))	NOTICE OF PUBLIC HEARING ON PROPOSED REPEAL

TO: All Concerned Persons

1. On April 19, 2024, at 10:00 a.m., the Fish and Wildlife Commission (commission) will hold a public hearing via the ZOOM platform to consider the proposed repeal of the above-stated rule. There will be no in-person hearing. Interested parties may access the telephonic public hearing in the following way:

Dial by telephone: +1 646 558 8656
Meeting ID: 865 0981 2456
Passcode: 276887

2. The commission and the department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Fish, Wildlife and Parks (FWP), no later than 5:00 p.m., on April 5, 2024, to advise us of the nature of the accommodation that you need. Please contact Crissy Bell, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 594-8071; or e-mail cbell@mt.gov.

3. The rule proposed to be repealed is as follows:

<u>12.9.101 BIG GAME MANAGEMENT POLICY</u>

AUTH: 87-1-301, MCA
IMP: 87-1-201, 87-1-301, MCA

REASON: This rule became effective on December 31, 1972. In the intervening years, this rule has become obsolete due to FWP's adoption of species-specific plans. These plans are initiated with citizen notice and participation, as well as commission guidance and approval. The commission proposes to repeal this rule that no longer aligns with or adapts to legislative, commission, or department species-specific management goals.

4. Concerned persons may submit their data, views, or arguments orally at the telephonic hearing. Written data, views, or arguments may also be submitted to: Brian Wakeling, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or email brian.wakeling@mt.gov and must be received no later than 5:00 p.m., April 22, 2024.

5. Crissy Bell or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

6. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing or email address of the person to receive the notice. Such written request may be mailed or delivered to: Department of Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be emailed to cbell@mt.gov.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the repeal of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Kevin Rechkoff
Kevin Rechkoff
Rule Reviewer

/s/ Lesley Robinson
Lesley Robinson
Chair
Fish and Wildlife Commission

/s/ Dustin Temple
Dustin Temple
Director
Fish, Wildlife and Parks

Certified to the Secretary of State March 12, 2024.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.50.213 pertaining to reimbursement payments for abandoned vehicle removal	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (MOTOR VEHICLE RECYCLING AND DISPOSAL)

TO: All Concerned Persons

1. On April 18, 2024, at 10:00 a.m., the Department of Environmental Quality (department) will hold an in-person public hearing in Room 111 of the Metcalf Building, at 1520 E. Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules. Interested parties may also attend the hearing electronically in the following ways:

Please click the link below to join the webinar:
https://mt-gov.zoom.us/j/89282371500?pwd=eXpucndEQ1BRNXp6dHdQVEdiVXFZUT09
Passcode: 125097
Or One tap mobile :
+12063379723,,89282371500#,,,,*125097# US (Seattle)
+12133388477,,89282371500#,,,,*125097# US (Los Angeles)
Or Telephone:
Dial(for higher quality, dial a number based on your current location):
+1 206 337 9723 US (Seattle)
+1 213 338 8477 US (Los Angeles)
+1 646 558 8656 US (New York)
Webinar ID: 892 8237 1500
Passcode: 125097
International numbers available: https://mt-gov.zoom.us/u/keqbP75LAc

Or an H.323/SIP room system:
H.323:
162.255.37.11 (US West)
162.255.36.11 (US East)
69.174.57.160 (Canada Toronto)
65.39.152.160 (Canada Vancouver)
Meeting ID: 892 8237 1500
Passcode: 125097
SIP: 89282371500@zoomcrc.com
Passcode: 125097

2. The Department of Environmental Quality will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you

require an accommodation, contact the Department of Environmental Quality no later than 5:00 p.m. on April 8, 2024, to advise us of the nature of the accommodation that you need. Please contact the Department of Environmental Quality at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-1388; fax (406) 444-4386; or e-mail DEQMAR17-441@mt.gov.

3. The rule as proposed to be amended is as follows, new matter underlined, deleted matter interlined:

17.50.213 PAYMENT REQUESTS (1) and (2) remain the same.

(3) The department shall pay each claim at the flat rate of ~~$125~~ $175 per vehicle removed.

(4) through (8) remain the same.

AUTH: 75-10-503, MCA
IMP: 75-10-532, MCA

REASON: Section 75-10-503(3), MCA, authorizes the department to adopt rules for reimbursement of charges by tow truck drivers for removing abandoned vehicles at the request of law enforcement in accordance with 61-12-401, MCA. ARM 17.50.213 establishes the amount of the reimbursement payment for each abandoned vehicle removed with a valid claim for payment. The money for reimbursement is contained in the junk vehicle fund authorized under 15-1-122(2)(a), MCA.

DEQ proposes to revise ARM 17.50.213(3) to increase the flat rate reimbursement amount from $125 per abandoned vehicle removed to $175 per abandoned vehicle removed. The most recent increase for the removal of abandoned vehicles was in 2019. Since that time, costs of goods and services have continued to rise, fuel and maintenance costs have increased, and the Bureau of Labor and Statistics Consumer Price Index indicates a 2019 $125 reimbursement amount now equates to $153 in 2023. To facilitate an equitable raise in reimbursements, the department proposes to increase the reimbursement slightly above the index rate. During the past legislative session, the department engaged with the Montana Towers Association and other stakeholders on a rate increase that would help offset their costs associated with towing abandoned vehicles.

Fiscal analysis prepared during the past legislative session showed that yearly towing reimbursement requests ranged from 845 to 975 in 2020-2022, averaging 895 requests for reimbursement annually. In 2023, 27 towing companies sought reimbursement from the department. Based on the average number of requests, the department estimates that the total yearly reimbursement payments would increase by $44,750, from $111,875 to $156,625, annually. Sufficient funds are available in the junk vehicle fund authorized by 15-1-122(2)(a), MCA, to pay for the proposed increase in reimbursement payments.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Loryn Johnson, Department of Environmental Quality, at 1520 E. Sixth

Avenue, P.O. Box 200901, Helena, Montana 59620-0901; (406) 444-1388; fax (406) 444-4386; or e-mail DEQMAR17-441@mt.gov, and must be received no later than 5:00 p.m., on April 19, 2024.

5. Nicholas Whitaker, staff attorney for the department, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person in paragraph 4 or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Sarah Christopherson
SARAH CHRISTOPHERSON
Rule Reviewer

/s/ Christopher Dorrington
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State March 12, 2024.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.33.121, 24.33.135, 24.33.142, and 24.33.151 and the repeal of ARM 24.33.111 and 24.33.131 pertaining to construction contractors	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On April 12, 2024, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/89334113696
Meeting ID: 893 3411 3696, Passcode: 276282
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 893 3411 3696, Passcode: 276282

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on April 5, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: It is necessary to amend these rules in furtherance of Executive Order No. 1-2021, requiring agencies to review administrative rules for the purpose of reducing red tape. In general, the amendments proposed in this rulemaking are designed to shorten, simplify, and clarify the administrative rules pertaining to construction contractors.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.33.121 CONSTRUCTION CONTRACTOR ~~REGISTRATION~~ APPLICATIONS AND FEES (1) The fee for the issuance, renewal, or reinstatement of a construction contractor certificate of registration is $70. The fee is not refundable.

~~(a) The fee is nonrefundable for applicants.~~

~~(b) An applicant will have a maximum of six months to submit the required information for approval. After six months, the applicant must resubmit the $70 fee and a new application.~~

~~(2)~~ If a business changes, adds, or removes an FEIN ~~structure changes to require an FEIN (or not require an FEIN)~~, a new application and $70 application fee must be submitted.

(2) An incomplete application will be deemed denied after 30 days. An applicant may submit required, missing information for consideration of the application within 180 days of initial application. After that time, the applicant must pay another application fee.

(3) The department may verify any application information, or other requirements of registration, as it deems necessary.

AUTH: 39-9-103, MCA
IMP: 39-9-206, MCA

REASON: There is reasonable necessity to amend this rule structurally to simplify readability. Provisions for incomplete applications are incorporated from ARM 24.33.111, which is proposed to be repealed. Section (3) is proposed to clarify that the department is able to verify any application information to ensure applicants meet the requirements of law. This new section eliminates the need for ARM 24.33.131, which had set forth various ways in which the department would conduct verifications. Verification will remain consistent with business practice.

24.33.135 SUSPENSION OF CONSTRUCTION CONTRACTOR REGISTRATION (1) through (1)(b) remain the same.

(c) failure to ~~report a change in status as required by ARM 24.33.142; and~~ comply with any law or rule pertaining to construction contractors, including compliance with the Workers' Compensation Act.

~~(d) failure to maintain workers' compensation coverage, if required.~~

~~(2) In addition to suspension, the department may assess penalties pursuant to the provisions of 39-9-301 and 39-9-401, MCA.~~

AUTH: 39-9-103, MCA
IMP: 39-9-204, 39-9-301, 39-9-401, MCA

REASON: Amendment to (1) is necessary to clarify that any violation of construction contractor law may result in a suspension of a contractor registration (CR). Reasonable necessity exists to strike (2) because it is not necessary to state in rule what is already in statute.

24.33.142 REPORTING CERTIFICATE CHANGES (1) through (1)(b) remain the same.

~~(c) FEIN;~~

(d) and (e) remain the same but are renumbered (c) and (d).

~~(f)~~ (e) ~~addition~~ change to ownership;

(g) and (h) remain the same but are renumbered (f) and (g).

~~(i)~~ (h) any change in ~~principal(s) of the business~~ business officers, members, or partners which has been or must be reported in filings with the Secretary of State.

(2) remains the same.

AUTH: 39-9-103, MCA
IMP: 39-9-201, 39-9-206, 39-9-301, 39-9-303, MCA

REASON: Reasonable necessity exists to strike FEIN from this rule because pursuant to ARM 24.33.121, a change in FEIN requires a new application for CR.

24.33.151 CERTIFICATES OF REGISTRATION (1) and (1)(a) remain the same.

(b) "~~EMPLOYEES ONLY~~ EMPLOYER" means the contractor carries workers' compensation coverage on employees and is registered to have employees.

(c) "LEASED EMPLOYEES ONLY" means the contractor uses employees of a professional employer organization, as defined at 39-8-102, MCA. ~~These employees are presumably covered with workers' compensation and unemployment insurance through the leasing company.~~

(d) remains the same.

(2) Along with a certificate, each certificate holder will receive a construction contractor registration wallet card ~~and a vehicle decal. The department shall review requests for more than one decal or card on an individual basis~~.

~~(3) To increase public visibility of the construction contractor registration program, the department may provide one participant gift per year to each registered contractor (i.e., baseball caps, flashlights, etc., as determined by the department).~~

AUTH: 39-9-103, MCA
IMP: 39-9-204, MCA

REASON: Reasonable necessity exists to amend terms for CR coverage to provide greater clarity as to workers' compensation coverage. Subsection (1)(c) is proposed to be amended to strike the presumption of coverage. CRs are required to ensure coverage for their employees. Professional employer organizations may provide that coverage, but the presumption set forth in the rule is superfluous. Section (2) is proposed to be amended and (3) removed because vehicle decals are no longer provided, and tracking of participant gifts by recipient is not required.

5. The rules proposed to be repealed are as follows:

24.33.111 ADDITIONAL APPLICATION INFORMATION

AUTH: 39-9-103, MCA
IMP: 39-9-201, MCA

REASON: There is reasonable necessity to repeal this rule because it is partially duplicative of ARM 24.33.121, and the remainder is more simply understood by incorporation into that rule.

24.33.131 EVIDENCE OF COMPLIANCE WITH LAWS

AUTH: 39-9-103, MCA
IMP: 39-9-201, MCA

REASON: There is reasonable necessity to repeal this rule because its substance–departmental verification of applications–is included within ARM 24.33.121. While other verifications may be needed or submitted by applicants, it is not necessary to state these business processes within administrative rule. See also the REASON for ARM 24.33.121.

6. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728; Helena, Montana 59624. Comments must be received no later than 5:00 p.m., April 19, 2024.

7. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

8. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

11. Department staff has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State March 12, 2024.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment and transfer of ARM 24.11.204, 24.11.317, 24.11.335, 24.11.447, 24.11.451, 24.11.457, 24.11.458, 24.11.462, 24.11.463, 24.11.469, 24.11.472, 24.11.475, 24.11.613, 24.11.915, 24.11.2005, 24.11.2007, 24.11.2015, 24.11.2201, 24.11.2204, 24.11.2205, 24.11.2208, 24.11.2221, 24.11.2405, 24.11.2407, 24.11.2504, 24.11.2506, 24.11.2701, 24.11.2704, 24.11.2707, 24.11.2711, and 24.11.2715, the adoption of NEW RULES I through XL, and the repeal of ARM 24.11.101, 24.11.201, 24.11.203, 24.11.206, 24.11.207, 24.11.208, 24.11.210, 24.11.315, 24.11.316, 24.11.318, 24.11.319, 24.11.320, 24.11.325, 24.11.326, 24.11.327, 24.11.328, 24.11.329, 24.11.331, 24.11.336, 24.11.337, 24.11.441, 24.11.442, 24.11.443, 24.11.445, 24.11.450A, 24.11.452A, 24.11.453A, 24.11.454A, 24.11.455, 24.11.456, 24.11.459, 24.11.464, 24.11.465A, 24.11.470, 24.11.471, 24.11.476, 24.11.481, 24.11.485, 24.11.487, 24.11.490, 24.11.491, 24.11.511, 24.11.515, 24.11.516, 24.11.517, 24.11.518, 24.11.521, 24.11.523, 24.11.525, 24.11.531, 24.11.534, 24.11.616, 24.11.617, 24.11.911, 24.11.1205, 24.11.1207, 24.11.1209, 24.11.1213, 24.11.1221, 24.11.1225, 24.11.1228, 24.11.1229, 24.11.2011, 24.11.2225, 24.11.2401, 24.11.2403, 24.11.2411, 24.11.2501, 24.11.2511, 24.11.2515, and 24.11.2801 pertaining to unemployment insurance	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND TRANSFER, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On April 11, 2024, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will

be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/89723691599
Meeting ID: 897 2369 1599, Passcode: 205716
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 897 2369 1599, Passcode: 205716

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on April 4, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The department proposes this rulemaking in furtherance of red tape relief efforts–to simplify, shorten, and clarify administrative rules pertaining to unemployment insurance. This proposal removes language that is unnecessarily duplicative of statute, as required by 2-4-305(2), MCA, and it removes language that is internally repetitive within the existing rules. The proposal also reorganizes the rules into shorter subchapters, divided by topic, to allow ease of use by the public, interested parties, and the department. The proposed rules are edited for length, clarity, and general readability.

In 2023, Unemployment Insurance (UI) implemented a new public-facing online platform for administration of UI claims, referred to in this notice as "online portal." The proposed new rules include the expanded functions of claim administration allowed by the new online portal. For example, the new online portal allows claimants and employers to file information with the department faster and more efficiently.

NOTE: The proposed new and amended rules in this proposal are organized in the proposed new chapter, ARM Title 24, chapter 40, and the rules are divided and ordered within preliminary proposed subchapters. Like the rule language, the rule organization is subject to further review and revision.

4. The rules as proposed to be amended and transferred, transferred, or adopted provide as follows, new matter underlined, deleted matter interlined:

A. Proposed Subchapter 1: Procedural Rules

24.11.204 (24.40.XXX) DEFINITIONS In addition to the terms defined in Title 39, chapter 51, MCA, including in 39-51-201 through 39-51-205, and 39-51-1121, MCA, the following definitions apply to this chapter, unless context or a particular rule provides otherwise:

(1) "Accredited by the state of Montana" means the educational institution meets the applicable accreditation standards defined in Title 20, MCA, for institutions in the state of Montana, and the standards defined by the U.S. Department of Education for institutions outside the state of Montana.

~~(1)~~ (2) "Additional claim" means a claimant reactivated a claim ~~that is reactivated as provided in ARM 24.11.445(2) following~~ during the claim's benefit year according to [NEW RULE XXVI], after one or more separations from insured ~~work occurring subsequent to the filing of an initial claim or of a prior additional claim~~ employment since the claim went inactive.

~~(2) "Adjudicate" means to make a determination, redetermination, or decision relative to an issue that exists on a claim.~~

~~(3) "Agent state" means any state from or through which an individual files an interstate claim for benefits against another state.~~

~~(4) "Appeal" means a request by an interested party aggrieved by a determination, redetermination, or decision for a review of the determination, redetermination, or decision at the next higher level of review.~~

~~(5)~~ (3) "Base period employer" means an employer from whom a claimant earned wages for insured ~~work~~ employment during the base period of the claim.

(4) "Benefit determination" means a decision involving any issue related to a claimant's qualification or eligibility for benefits, including monetary, nonmonetary, and separation issues. The term also includes a claimant's overpayment amount and determinations regarding waiver of overpayment recovery.

(6) and (7) remain the same but are renumbered (5) and (6).

~~(8)~~ (7) "Claim," as used in this chapter and in Title 39, chapter 51, MCA, unless the context or language clearly indicates otherwise, means an initial, additional, or ~~reactivated~~ reopened claim for unemployment insurance benefits.

~~(9)~~ (8) "Claimant" means a person who has filed a claim, or who is in the process of filing a claim.

~~(10) "Claims processing center" means the center that provides unemployment insurance claims services to the public.~~

~~(11) "Commuter claimant" means an individual who customarily commutes across state lines from a residence in one state to work in a liable state.~~

~~(12) "Contribution rate schedule" means the schedule of contribution rates assigned to employers each calendar year based upon the ratio between the trust fund balance as of October 31 and the total wages in employment for the year ending June 30.~~

~~(13)~~ (9) "Days" means a specified number of consecutive calendar days, ~~not excluding~~ including Saturdays, Sundays, and holidays except as provided in ARM ~~24.11.206~~ [NEW RULE I].

~~(14)~~ (10) "Discharge," as used in 39-51-2303, MCA, means a termination of the ~~work~~ employment relationship between an employer and a ~~worker~~ employee initiated by the employer, for reasons other than a lack of work, whether or not in response to some act or omission on the part of the ~~worker~~ employee.

~~(15) "Educational credential" means a degree, diploma, certificate, transcript, report, document, letters of designation, marks, appellations, series of letters, numbers, or words which signify, purport, or are generally taken to mean enrollment,~~

~~attendance, progress, or satisfactory completion of the requirements or prerequisites of a class, course or program of training, instruction, or study.~~

~~(16)~~ (11) "Educational institution," as used in 39-51-2108, 39-51-2302, and 39-51-2307, MCA, means any public, private, or nonprofit academic, vocational, technical, business, professional, or other school (including a home school), college, or university ~~that offers educational credentials and/or educational services~~.

~~(17) "Educational service" means a class, course, or program of training, instruction, or study.~~

~~(18) "Full-time work" means insured work in which a worker is regularly scheduled to work 40 or more hours per week.~~

(19) remains the same but is renumbered (12).

(13) "Inactive claim" means a claimant did not file a request for benefit payments for four consecutive weeks during the claim's benefit year. In order to begin claiming benefits again when a claim goes inactive, a claimant must follow the procedures pursuant to [NEW RULE XXVI].

(20) remains the same but is renumbered (14).

~~(21)~~ (15) "Insured ~~work~~ employment" means employment, as defined in 39-51-203, MCA, including federal civilian service, federal military service, and services that constitute employment in any other state, but does not include those services enumerated in 39-51-204, MCA.

~~(22) "Interstate Benefit Payment Plan" means the plan approved by the National Association of State Workforce Agencies (NASWA) under which benefits are payable to unemployed individuals absent from the state (or states) in which benefit credits have accumulated.~~

~~(23) "Interstate claimant" means an individual who files an interstate claim for benefits under the unemployment insurance law of a liable state.~~

~~(24)~~ (16) "Issue" means any act, circumstance, or condition, occurring or existing before or during a claimant's benefit period, that has the potential to disqualify or make a claimant ineligible for benefits or to reduce the amount of benefits payable to a claimant. An issue includes both monetary and nonmonetary factors affecting benefit eligibility.

~~(25)~~ (17) "Job attached" means a claimant is able and available and has a definite or approximate date of hire or recall to insured ~~work~~ employment at 30 or more hours per week.

(26) remains the same but is renumbered (18).

~~(27)~~ (19) "Leave of absence" means a cessation of ~~work~~ employment due to reasons other than an on-the-job injury, requested by the ~~worker~~ employee and approved by the employer, with an understanding the ~~worker~~ employee will be returning to ~~work~~ employment for the employer.

~~(28)~~ (20) "Leaving work" as used in 39-51-2302, MCA, includes the term "leaving employment," and means:

(a) any permanent, long-term, or indefinite voluntary reduction in ~~a worker's~~ an employee's hours of insured, ~~full-time work~~ regularly scheduled employment of 40 or more hours per week for a particular employer initiated by the ~~worker~~ employee, whether or not the reduction occurs in response to an act or omission of the employer or is approved by the employer; or

(b) a cessation of employment initiated by the ~~worker~~ employee, which resulted from the ~~worker's~~ employee's absence from work without an employer-approved leave of absence for:

(i) five or more consecutive work days due to a physical or mental condition, which prevented the ~~worker~~ employee from performing the essential functions of the job; or

(ii) remains the same.

~~(29) "Liable state" means the state responsible for administering an interstate claim for benefits established by an individual under the law of the liable state.~~

(30) remains the same but is renumbered (21).

~~(31) "Monetary determination" means a determination of a claimant's potential entitlement to benefits based upon the amount and distribution of wages in the claimant's base period.~~

~~(32) "Nonmonetary determination" means a decision involving an issue related to a claimant's qualification or eligibility for benefits, independent of claimant's monetary determination of benefits.~~

(33) remains the same but is renumbered (22).

(23) "Online portal" means the department's public-facing online system for administration of the unemployment insurance program.

~~(34)~~ (24) "Overpayment" means the amount of benefits paid to a claimant from a state or federal unemployment compensation fund that ~~the liable~~ a state subsequently determines the claimant was not entitled to receive ~~by reason~~ because of disqualification, ineligibility, or reduction in entitlement under ~~the~~ that state's law ~~of the liable state~~.

~~(35) "Participating state" means a state which has subscribed to the interstate reciprocal overpayment recovery agreement.~~

~~(36)~~ (25) "Part-time ~~work~~ employment " means insured ~~work~~ employment in which ~~a worker~~ an employee is regularly scheduled to work less than 40 hours per week.

(26) "Pension" means pension payments, retirement benefits, retirement pay, annuity, or similar periodic payment made to an individual based on previous employment. This definition does not include payments from a fund to which the individual was required to make a direct contribution.

~~(37)~~ (27) "Permanent layoff" means an indefinite termination of the ~~work~~ employment relationship between an employer and ~~a worker~~ an employee initiated by the employer due only to a lack of work for the ~~worker~~ employee to perform.

(28) "Reactivated claim" means a claimant did not file a request for benefits for at least four consecutive weeks, and before the end of the benefit year the claimant contacted the department to begin requesting benefits again according to [NEW RULE XXVI].

~~(38)~~ (29) "Recently lived" as used in 39-51-2111~~(5)~~, MCA, means having lived with the abusive person for a period of time during the 12-month period immediately preceding the date the claimant left insured ~~work~~ employment or was discharged from insured ~~work~~ employment due to domestic violence or domestic abuse.

~~(39) "Recovering state" identifies a state that has received a request from another state to assist in the recovery of a benefit overpayment.~~

~~(40)~~ (30) "Reopened claim" means a claimant reactivated a claim ~~that is reactivated as provided in ARM 24.11.445(2)~~ during the claim's benefit year according to [NEW RULE XXVI] when there ~~have been~~ were no separations from insured ~~work subsequent to the filing of an initial claim or of a prior additional claim~~ employment since the claim went inactive.

~~(41) "Requesting state" means the state that has issued a final determination of benefit overpayment and requests another state to assist in recovering the outstanding balance from the overpaid individual.~~

(42) remains the same but is renumbered (31).

~~(43)~~ (32) "Separation" means any reduction in ~~a worker's~~ an employee's hours of insured ~~work~~ employment for a particular employer.

(44) remains the same but is renumbered (33).

~~(45)~~ (34) "State-approved training program" means a program the department determines is reasonably expected to lead to employment for a claimant and meets the criteria outlined by ARM ~~24.11.475~~ [24.40.XXX APPROVAL OF TRAINING BY THE DEPARTMENT].

~~(46) "Suitable work" means work the department determines a claimant is reasonably suited to perform by experience, education, or training. Suitable work is further described by ARM 24.11.485.~~

~~(47)~~ (35) "Suspension" means ~~an abeyance~~ a pause of the ~~work~~ employment relationship between an employer and a ~~worker~~ employee initiated by the employer for disciplinary, investigative, or other reasons not including a lack of work for the ~~worker~~ employee to perform.

(36) "Tax determination" means a decision regarding an employer's contributions, charges, reporting, or other issue determined pursuant to 39-51-1109, MCA.

~~(48)~~ (37) "Temporary layoff" means a suspension of the ~~work~~ employment relationship between an employer and a ~~worker~~ employee initiated by the employer due only to a lack of work for the ~~worker~~ employee to perform and where the employer intends to recall the ~~worker~~ employee at such time as work becomes available, except for separations from temporary ~~work~~ employment as defined in ARM ~~24.11.454A~~ [NEW RULE XIII].

(49) remains the same but is renumbered (38).

~~(50)~~ (39) "Termination pay" means a payment from an employer to a claimant as the result of discharge or permanent layoff.

(a) through (a)(iii) remain the same.

(iv) continuation of wages for a designated period of time following cessation of ~~work~~ employment or other similar payment; and

(v) payments made under an incentive, ~~worker~~ employee buy-out, or similar plan designed to produce a general or specific reduction in force by inducing ~~workers~~ employees to leave voluntarily or in lieu of involuntary termination, whether paid in a lump sum or incrementally over any period of time.

(b) Termination pay may include payment for accrued unused vacation, sick leave, or any other leave paid at or after termination from ~~work~~ employment.

~~(51) "Transferring state" means the state that transfers wage credits reported for a claimant to the liable state for use in determining the benefit entitlement of the claimant under the law of the liable state.~~

~~(52) "Trust fund" means the unemployment insurance fund created in 39-51-401, MCA.~~

(53) remains the same but is renumbered (40).

~~(54) "Valid claim" means an initial claim with base period wages of an amount sufficient to qualify the claimant for benefits under 39-51-2105, MCA, or under a comparable law of any other state, and which results in the establishment of a benefit year under 39-51-201, MCA, or under a comparable law of any other state, without respect to whether or not the claimant is otherwise qualified or eligible to receive benefits.~~

~~(55)~~ (41) "Valid notice" means a formal, unconditional, specific communication between an individual ~~worker~~ employee and an employer, or authorized agent of an employer, that provides notice of the date ~~a worker~~ an employee intends to leave work voluntarily (quit) or notice of the date an employer intends to terminate ~~a worker~~ an employee from employment.

~~(56) "Voluntary quit" means a worker left work with or without good cause attributable to the employment.~~

~~(57) "Wage credits" means the wages reported to a state unemployment insurance program that were paid to an employee.~~

~~(58) "Wage credits from another state" means the assignment or transfer of wage credits, under an arrangement under 39-51-504(1), MCA, to Montana or another liable state, pursuant to 20 CFR 609, 20 CFR 616, or 20 CFR 614.~~

~~(59) "Waiting week" means a week of total unemployment, as defined by 39-51-2101, MCA, for which a claimant must file a weekly payment request but is not entitled to receive unemployment insurance benefits, pursuant to 39-51-2104, MCA.~~

~~(60) "Week claimed" means any week with respect to which a claimant files a weekly payment request for benefits or waiting week credit.~~

~~(61) "Week ending date" is the date on which the Saturday of any week falls.~~

~~(62) "Week of unemployment" means any week of unemployment, as defined in the law of the liable state in which a valid claim is established.~~

(63) remains the same but is renumbered (42).

~~(64)~~ (43) "Work search contact" means a documented contact by a claimant with an employer or authorized agent that hires workers for work or employment the claimant is qualified for and able to perform, and further described by ARM ~~24.11.453A~~ [NEW RULE XXII].

~~(65) "Work week" or "week of work" is a week as defined in 39-51-201, MCA, in which the claimant earns wages that are covered by unemployment insurance.~~

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, 39-51-401, 39-51-504, 39-51-605, 39-51-1218, Title 39, chapter 51, parts 21 through 25, 39-51-2601, 39-51-3201, 39-51-3202, 39-51-3206, MCA

REASON: The proposed amendments to the rule clarifying the terms including "work" vs. "employment" and "worker" vs. "employee" are necessary because the UI program only applies to individuals who are in or were in an employment relationship with an employer, and the terms "employer" and "employment" have specific definitions in Title 39, chapter 51, MCA, including 39-51-202 and 39-51-203, MCA.

The terms "work" and "worker" are more general and can include independent contractor relationships, to which the UI program does not generally apply.

A proposed definition of "accredited by the state of Montana," found in 39-51-2302(3), MCA, is necessary because the department requires a means for verifying accreditation for institutions that are not located in the state.

The proposed repeal of the definitions of "adjudicate" and "appeal" is necessary because both are common legal terms with established meanings, and the use of the terms in these rules references only those established meanings.

A proposed definition for "benefit determination" is necessary because it combines the definitions for two terms that the department proposes repealing: "monetary determination" and "nonmonetary determination." The proposed new definition simplifies the rules because both monetary and nonmonetary determinations follow the same procedural process in these rules. The new definition also clarifies that the determination of an overpayment amount and a determination regarding waiver of a benefit overpayment are also considered "benefit determinations" under these rules.

The proposed amendment to "claim" changing "reactivated" to "reopened" is necessary because the list of "initial, additional, or reactivated" does not describe three different types of claims. Reactivated claims include both additional claims and reopened claims, but reopened claims are not the same as initial or additional claims; therefore, the list should state "initial, additional, and reopened" claims.

The proposed repeal of the definition of "claims processing center" is necessary because it has been replaced by the term "department" throughout these rules.

The proposed repeal of the definition of "contribution rate schedule" is necessary because the term is no longer used in these rules.

The definition of "days" is amended to specify "calendar" days and to correct internal cross references to rules that are repealed in this notice.

The proposed repeal of the definitions of "educational credential" and "educational service" is necessary because neither term is used in Title 39, chapter 51, MCA, and the department proposes repealing the limited use of these terms in these rules. The department proposes amending the definition of "educational institution" and to remove the references to "educational credentials" and "educational services." As drafted, "educational credential" and "educational service" also apply to the programs defined by "State-approved training program" and ARM 24.11.475 (24.40.XXX) APPROVAL OF TRAINING BY THE DEPARTMENT; the definitions do not clarify or amplify the specific definition of "educational institution" and are therefore unnecessary. Further, as the term "educational service" is used in proposed NEW RULE XXIX, the definition is unnecessary because it is duplicative of the definition of "educational service agency" in 39-51-2108, MCA. The department

proposes further amending the definition of "educational institution" to add the reference to 39-51-2302, MCA.

The repeal of (18) "full-time work" is necessary because it was only used in these definitions, and it has been consolidated into (28) "leaving work."

The proposed definitions for "inactive claim" and "reactivated claim" are necessary to clarify the terms in NEW RULE XXVI. The proposed definitions also help clarify the definition of initial, additional, and reopened claims.

The proposed amendment of "insured work" to "insured employment" is necessary to bring consistency and specificity to the rules. "Work" is a general term that does not specifically indicate an employment relationship, and the UI program applies specifically to employers and employees.

A proposed definition of "online portal" is necessary because it is a generic term for describing the public's online access to the department's unemployment insurance program. A generic term allows for updates to programs and software without requiring updates to the department's rules.

The definition of "overpayment" is amended to remove references to the term "liable state," repealed in this notice, and to simplify language.

A proposed definition of "pension" is necessary pursuant to 39-51-2203, MCA.

The definition of "state-approved training program" is amended to correct an internal cross reference to a rule that is transferred in this notice.

The proposed repeal of the definition of "suitable work" is necessary because it is duplicative of 39-51-2304, MCA.

A proposed definition for "tax determination" is necessary pursuant to 39-51-1109, MCA, to allow clear distinction between tax determinations and benefit determinations subject to appeals, as described in proposed chapter 40, subchapter 2.

The definition of "temporary layoff" is amended to correct an internal cross reference to a rule that is repealed in this notice.

The proposed repeal of the definition of "waiting week" is necessary because it is duplicative of 39-51-2104, MCA.

The proposed repeal of the definition of "trust fund" is necessary because it is duplicative of 39-51-401, MCA.

The proposed repeal of the definition of "valid claim" is necessary because it is unnecessary to have a separate definition for the instance when a claimant has

established only monetary eligibility for a claim. The circumstances for initial monetary edibility for a claim are detailed in NEW RULE XIX.

The proposed repeal of "voluntary quit" and "wage credit" are necessary because the terms do not amplify statute and are not used in these rules.

The proposed repeal of the definition of "week ending date" is necessary because it is duplicative of the definition of "week" in 39-51-201(26), MCA.

The proposed repeal of "week claimed" is necessary because the term is only used once in these rules and does not provide additional detail beyond the common meaning of the phrase.

The proposed repeal of the definition of "week of unemployment" is necessary because it is duplicative of 39-51-2101, MCA.

The definition of "work search contact" is amended to correct an internal cross reference to a rule that is repealed in this notice.

The proposed repeal of "work week" and "week of work" is necessary because the terms are not used in these rules.

The department proposes repealing the following definitions because the procedures for interstate claims and recovery of interstate benefit overpayments are adopted by reference in NEW RULE XXXVIII and NEW RULE XXXIX. The necessary definitions for claim administration are adopted by reference in the new rules, making the definitions in the department's rules unnecessary and duplicative: "agent state," "commuter claimant," "interstate benefit payment plan," "interstate claimant," "liable state," "participating state," "recovering state," "requesting state," "transferring state," and "wage credits from another state."

24.11.915 (24.40.XXX) CONFIDENTIAL INFORMATION (1) through (4) remain the same.

(5) The department shall charge for the cost of any disclosure to a third party other than an "interested party" pursuant to ARM ~~24.11.207~~ [NEW RULE II]. Costs must be paid in full prior to the release of information. When the disclosure consists of no more than two pages of hard copy information and involves no more than one-half hour of staff time, the department shall make no charge.

(6) remains the same.

AUTH: 39-51-301, 39-51-302, 39-51-603, MCA
IMP: 39-51-501, 39-51-603, MCA

REASON: This rule is amended to correct the reference to a transferred rule.

NEW RULE I (24.40.XXX) TIME AND PROCEDURE FOR FILING INFORMATION (1) Interested parties shall file responses to the department's

requests for information and questions within eight calendar days. Interested parties shall file responses to any subsequent request for information within two business days. The department's request for information or questions shall include the interested party's specific deadline to file a response.

(2) When a deadline falls on a Saturday, Sunday, or holiday, the filing is due the next business day. Information is filed with the department on the day it is received by the department, not the day it is sent or postmarked. This rule does not apply to the filing of weekly payment requests under [NEW RULE XXI].

(3) Interested parties may file responses using the online portal, or by filing responses through the mail.

(4) The department may extend the deadlines for filing information if the interested party shows good cause for the delayed filing.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-301, 39-51-603, 39-51-605, Title 39, chapter 51, parts 11 through 13, and 21 through 24, MCA

REASON: The proposed new rule is necessary because it contains the entire substance of ARM 24.11.206, repealed below. The new rule updates the means for responding to requests for information and questions, including allowing online filing, and it removes references to outdated technology such as facsimile filing.

NEW RULE II (24.40.XXX) INTERESTED PARTIES (1) The department is an interested party to all issues adjudicated regarding claims for benefits and employer tax liability.

(2) A claimant is an interested party to all adjudication of claimant's eligibility and qualification for unemployment insurance benefits.

(3) Except as provided by 39-51-605, MCA, and [NEW RULE III], a base period employer is an interested party to an adjudication of the claimant's separation from employment with that employer. An employer is not an interested party to an adjudication of nonseparation issues related to a claim.

(4) An employer is an interested party to adjudication of the employer's tax determinations, including the employer's tax liability, contribution rate, application for refund, subject wages, and other tax contribution-related issues.

(5) The department shall provide only interested parties with written notice of a determination, redetermination, hearing, or appeal of each issue adjudicated by the department. Only an interested party has standing to request a redetermination, hearing, or appeal.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-605, Title 39, chapter 51, parts 11 and 12, 21 through 24, and 32, MCA

REASON: The proposed new rule is necessary because it contains the substance of ARM 24.11.207 while simplifying the language and removing internal repetition. ARM 24.11.207(5), (6), and (7) are combined into (5) of the proposed new rule.

NEW RULE III (24.40.XXX) EMPLOYER LOSS OF INTERESTED PARTY STATUS (1) An employer gives up the right to participate as an interested party in the adjudication of a claimant's claim when the employer fails to respond to a request for information or adequately answer questions from the department within eight days of the department's request or questions.

(2) The department shall provide written notice to the employer of the determination of loss of rights. The employer may then only participate as an informational witness in the claim adjudication.

(3) The department may restore the employer's interested party status if the employer shows good cause for the lack of, inadequate, or untimely responses to the department's request for information or questions.

(4) The employer and the department are the only interested parties to the adjudication of an employer's loss of interested party status.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-605, MCA

REASON: The proposed new rule is necessary because it contains the substance of (1), (3), (5), (6), of ARM 24.11.208, repealed below. The new rule removes ARM 24.11.208(2) and (4) that are internally repetitive, and it removes (7) that is duplicative of 39-51-605, MCA.

B. Proposed Subchapter 2: Hearing Procedure

NEW RULE IV (24.40.XXX) APPEAL OF DEPARTMENT REDETERMINATIONS - REQUEST FOR HEARING (1) An interested party may appeal a benefit redetermination or tax redetermination by filing a request for hearing. A request for hearing must contain the reasons for the appeal, including any information or argument not considered by the department which could affect the outcome of the appealed redetermination.

(2) A request for hearing of a benefit redetermination or tax redetermination must be in writing. An interested party may file the request for hearing in person, by mail, or using the online portal as specified by the department.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 2-4-201, 39-51-1109, 39-51-2402, 39-51-2407, MCA

REASON: The proposed new rule is necessary because it contains (2) through (4) of ARM 24.11.315, repealed below. Section (1) of ARM 24.11.315 is repealed because it is duplicative of 39-51-2402, MCA. ARM 24.11.315(2) is amended to detail the expectations for an interested party's appeal, and ARM 24.11.315(3) and (4) are consolidated into a single new section.

NEW RULE V (24.40.XXX) HEARING PROCEDURE (1) The conduct, timing, and means of conducting hearings are in the sound discretion of the appeals referee. The appeals referee may issue orders to govern the proceedings before and during a hearing.

(2) Unemployment insurance hearings are informal, but hearings are conducted to determine the substantial rights of all parties. The rules of evidence do not apply. However, the rules of evidence may be used as guidelines to determine the relevance, prejudice, or weight of evidence. All interested parties have the right to call and cross-examine witnesses.

(3) The Montana Rules of Civil Procedure do not apply; however, the rules may be guidelines for the appeals referee.

(4) Documents may be served electronically on any party who agrees in writing during the hearing process to electronic service. Written agreement to electronic service during claims processing does not mean the party agreed to electronic service under this rule.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-1109, 39-51-2403, 39-51-2407, MCA

REASON: The proposed new rule is necessary because it contains (2) of ARM 24.11.320, repealed below and (1) through (4) of ARM 24.11.328, repealed below. The new rule simplifies the procedure for benefit hearings and tax hearings because it vests authority to govern hearing proceedings with the appeals referee, and the new rule recognizes the due process right of an interested party to cross-examine witnesses.

24.11.317 (24.40.XXX) ~~NOTICE OF~~ BENEFITS HEARINGS NOTICE--TIMING ~~(1) A hearing must be scheduled as soon as practical.~~

~~(2) Written notice of a tax hearing or pre-hearing conference must be mailed to all interested parties, including the department's representative, at least 20 days before the hearing or conference.~~

~~(3)~~ (1) Written notice of a benefits hearing must be ~~mailed~~ sent to all interested parties at least ten days before the hearing. The hearing must be held within 30 days of the filing of the appeal. The appeals referee shall deny a request to postpone unless delay is justified by extraordinary circumstances beyond the requesting party's control.

~~(4)~~ (2) A hearing notice must ~~comply with 2-4-601, MCA, stating~~ state the date, time, and place of the hearing, legal authority for the hearing, and the issues involved in the matter.

~~(5)~~ (3) The advance notice requirements ~~in (2) and (3)~~ do not apply to rescheduled hearings or rescheduled prehearing conferences, if the parties have been given reasonable notification of the new date and time.

AUTH: 39-51-301, 39-51-302, MCA
IMP: ~~39-51-1109,~~ 39-51-2403, 39-51-2407, MCA

REASON: The proposed amendments are necessary to change "mailed" to "sent" to provide for other means of transmission of notice to interested parties. Reference in (2) to the department is removed because, pursuant to ARM 24.11.207, the department is always an interested party. It does not need to be specifically enumerated. Reference to 2-4-601, MCA is removed to avoid any confusion about

the applicability of the Montana Administrative Procedure Act to UI proceedings. Necessity exists to update the implementation citations to reference appropriate hearing statutes. Inclusion of timelines for holding a hearing is incorporated from ARM 24.11.320, which is proposed to be repealed.

NEW RULE VI (24.40.XXX) TAX HEARINGS NOTICE – SCHEDULING CONFERENCE – BURDEN OF PROOF (1) The appeals referee shall send notice of the scheduling conference to all interested parties at least 14 days before the conference is scheduled.

(2) The appeals referee and interested parties shall address the following during the scheduling conference:

(a) determine the issues that must be decided by the appeals referee, noting that the appellant has the burden of proving the department erred in determining the application, duration, or amount of the tax;

(b) identify possible remedies;

(c) exchange copies of all proposed exhibits and names, addresses, and telephone numbers of all proposed witnesses;

(d) determine whether discovery is necessary and how it shall occur;

(e) set deadlines for motions;

(f) discuss hearing scheduling, logistics, and procedures; and

(g) perform any other acts or duties to facilitate the hearing and adjudication of the appeal.

(3) After the scheduling conference, the appeals referee shall issue a written scheduling order and send it to all interested parties. The scheduling order controls over prior pleadings in the matter.

(4) If a party fails to participate in the scheduling conference, or fails to comply with any prehearing order, the appeals referee may impose sanctions upon that party including, but not limited to:

(a) dismissal of the case;

(b) default judgment for the opposing party; or

(c) limitation of evidence or witnesses at the hearing.

AUTH: 39-51-302, MCA
IMP: 39-51-1109, 39-51-2403, MCA

REASON: The proposed new rule is necessary to clarify that a scheduling conference will be held in all cases involving tax redeterminations, and notice will always be provided. The new rule replaces the substance of ARM 24.11.325, repealed below, and the burden of proof in tax hearings from (1) of ARM 24.11.328, repealed below.

24.11.335 (24.40.XXX) SUBPOENAS (1) The appeals referee may issue subpoenas pursuant to 39-51-2409, MCA, on the referee's own motion, or may issue up to three to an interested party upon request. Subpoenas may be issued for the attendance of witnesses or the production of documents. Subpoenas must be served in the same manner as provided in civil actions, and fees must be paid as provided in 26-2-501, MCA.

(2) and (3) remain the same.

~~(4) The appeals referee may enter the appropriate order for failure to comply with the provisions of a subpoena.~~

AUTH: 39-51-302, MCA
IMP: 39-51-1109, 39-51-2403, 39-51-2409, MCA

REASON: The proposed amendments to (1) are necessary to clarify the authority for issuance of subpoenas as well as the required fees. Reasonable necessity exists to strike (4) because the decision to issue an order is vested in the appeals referee.

C. Proposed Subchapter 4: Wages

NEW RULE VII (24.40.XXX) WAGES (1) In addition to the definition of "wages" in 39-51-201, MCA, wages include, but are not limited to, the following types of remuneration for services:

(a) payments made from an employee's gross remuneration into deferred compensation or cafeteria plans and other similar plans. Such payments are wages reportable for the period in which the compensation was earned;

(b) advances or draws against future earnings, when paid. Payments designated as loans in the employer's records are considered wages unless the loan is to be repaid under a written schedule agreed upon by the employee and the employer;

(c) payments distributed to corporate officers or shareholders in lieu of reasonable compensation for services performed, even though designated as profits or dividends pursuant to [ARM 24.11.2506 (24.40.XXX) REASONABLE WAGES];

(d) payments for sick leave and accident disability, including payments made by a third-party insurance company to the employee. For example, if the employer pays premiums to a third party to cover sick leave or accident disability costs, the payments paid by the third party to the employee are wages. If the employee pays the premiums for such coverage, the sick leave or accident disability payments are not wages.

(2) This chapter includes wages that are actually and constructively paid. Wages are constructively paid if they are credited to the individual employee's account or set apart for an individual so that they may be drawn upon by the individual at any time, although not actually in the individual's possession.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, 39-51-1103, MCA

REASON: The proposed new rule is necessary because it contains (1)(b), (g), (h), and (i) of ARM 24.11.2501, repealed below. The new rule removes ARM 24.11.2501(1)(a), (c), and (f) because they are duplicative of 39-51-201(25), MCA, and ARM 24.11.2501(2) is transferred to NEW RULE XL. Section (3) is repealed because the name to whom wages are designated may be material to an issue addressed pursuant to this chapter.

NEW RULE VIII (24.40.XXX) CASH VALUE FOR WAGE CALCULATION

(1) For the purposes of this chapter, the department must estimate the reasonable cash value of all remuneration paid in any medium other than cash. The reasonable cash value must be reported as wages by both employers and claimants for purposes of this chapter.

(2) The department determines the cash value of room and board, unless the employment contract sets the value at an amount equal to or greater than the amounts established in this rule. Room and board has at least the following cash value:

(a) full room and board, weekly	$130
(b) meals, per week	60
(c) meals, per meal	3
(d) room, per week	70

(3) The cash value of all other types of non-cash payments is the market value of the item or service received.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, 39-51-1103, MCA

REASON: The proposed new rule is necessary because the department is required to determine the cash value of remuneration for services pursuant to the definition of "wages" in 39-51-201(25)(a), MCA. The new rule contains (1)(d) and (e) of ARM 24.11.2501, repealed below.

24.11.2506 (24.40.XXX) REASONABLE WAGES (1) A business filing income taxes as a corporation shall accurately report compensation for services performed by a corporate officer, LLC member or manager, or shareholder employee as wages for the purpose of unemployment insurance taxation.

(2) The department will consider time devoted to the business, position and responsibility, similar employments, and any other reasonably related factors to determine whether a corporate officer, LLC member or manager, or shareholder employee receives reasonable wages. To the extent feasible and practicable, the department will rely on applicable considerations for Internal Revenue Service determinations of reasonable compensation.

~~(2) The department shall use the following factors to evaluate whether reasonable compensation for services performed by a corporate officer, LLC member, or shareholder employee has been reported to the department as wages:~~

~~(a) qualifications and business role of corporate officer, LLC member, or shareholder employee, including but not limited to:~~

~~(i) the amount of time devoted to the business;~~

~~(ii) position and responsibility within the business; and~~

~~(iii) duties performed for business;~~

~~(b) compensation paid to other similarly situated employees of the business and the business entity's wage policy;~~

~~(c) a review of the State Occupational Employment and Wage Estimates for the pertinent occupation; and~~

~~(d) nature, size, and location of business, including:~~

~~(i) complexity of the business;~~

~~(ii) financial condition of the business including, but not limited to, the relationship of the compensation to gross and net business income, cash flows, total sales or revenues, and net income adjusted for non cash items such as depreciation, depletion, and amortization; and~~

~~(iii) cost of living and general economic conditions in the business's locale.~~

~~(3) The department shall calculate the actual remuneration received by a corporate officer, LLC member, or shareholder employee by examining payments including, but not limited to, the following:~~

~~(a) direct payments by check, electronic transfer, or cash;~~

~~(b) payments to any family member who did not perform services for the payment;~~

~~(c) payments classified as gifts, distributions of profit, dividends, owner draws or contributions, and return of capital;~~

~~(d) distribution of property or services paid for by the corporation;~~

~~(e) payments for personal expenses including, but not limited to direct payments for personal debts, payments of credit card bills that include personal purchases, and use of company vehicles for personal use;~~

~~(f) payments classified as loans for which there is no evidence of a repayment schedule or the payment schedule does not impose a reasonable interest rate;~~

~~(g) payments for rent in excess of market value; and~~

~~(h) the market value of any remuneration paid in any medium other than cash.~~

~~(4) The department shall compare the reported wages to actual remuneration received by a corporate officer, LLC member, or shareholder employee and consider the factors enumerated by (2) to determine a reasonable compensation for services performed.~~

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, 39-51-203, 39-51-602, 39-51-603, 39-51-1103, 39-51-1108, MCA

REASON: This rule was initially adopted in 2011. At that time, the department recognized the need to dissuade the payment or reporting of unrealistically low wages for high-level employees. While the issue continues to exist, the department recognizes the need to focus audit resources. This proposed amendment seeks to find the balance between the need to audit what is a misrepresentation of wages with limited resources for audits. To be clear, the acceptance of wages by unemployment insurance does not mean that such wages will be accepted for other purposes, such as federal or state income tax or business tax reporting. Further, it is recognized that an employee whose wages are underreported would be entitled to less unemployment insurance benefits than they might otherwise, should a claim be filed. Such employee would also be limited in their ability to challenge benefits received, due to their likely involvement in the determination of reportable wages.

24.11.2504 (24.40.XXX) RENTAL OF EQUIPMENT OR CAPITAL ASSETS--NOT WAGES (1) through (5) remain the same.

(6) Passenger vehicle expenses may be reimbursed either on the basis of actual receipts or upon mileage, at a rate no greater than that allowed by the ~~United States~~ Internal Revenue Service for that year, provided that the individual actually furnishes the vehicle.

(7) remains the same.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, 39-51-1103, MCA

REASON: The proposed amendment to (6) is necessary for internal consistency and to remove the unnecessary designation specifying the "United States" Internal Revenue Service.

NEW RULE IX (24.40.XXX) PAYMENTS THAT ARE NOT WAGES – EMPLOYEE EXPENSES, JUROR FEES, DIRECTOR'S FEES, AND MILITARY DIFFERENTIAL PAY (1) Employer payments to reimburse an employee for business expenses incurred during the course and scope of employment are not wages if the reimbursement amount:

(a) is entered separately in the employer's records;

(b) is not deducted from or based on a percentage of the employee's wage; and

(c) does not replace the customary wage for the occupation.

(2) Employer reimbursement of employee expenses must be based on:

(a) actual cost for lodging, goods, or services, supported by receipts;

(b) a flat rate for meals not exceeding the per diem allowed by the Internal Revenue Service for the year, unless the employer has a documented higher rate of reimbursement; or

(c) when an employee-furnished vehicle is used, a mileage rate no greater than that allowed by the Internal Revenue Service for that year.

(3) Expense reimbursements, fees, meals, or other payments provided to a juror by a court are not wages.

(4) Customary and reasonable director's fees for attending meetings of the board of directors of a corporation are not wages, if the fees are not paid in lieu of reasonable compensation for services performed.

(5) Payments made by an employer to an employee who is called to active duty in the military services for more than 30 days, when the payments represent a replacement of part or all the wages the employee would have received for performing services for the employer, to be military differential pay and not wages for purposes of Title 39, chapter 51, MCA.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, 39-51-1103, MCA

REASON: The proposed new rule is necessary because it combines the entirety of ARM 24.11.2511, repealed below, and (1), (4), and (6) of ARM 24.11.2515, repealed

below. Sections (2), (3), and (5) of ARM 24.11.2515 are repealed and not transferred because they are duplicative of 39-51-201(25), MCA.

D. Proposed Subchapter 5: Employee Status

24.11.2407 (24.40.XXX) EMPLOYEE STATUS – DETERMINATION OF INDEPENDENT CONTRACTORS – DEPARTMENT PROCEDURES (1) remains the same.

~~(2) To determine whether an independent contractor or employment relationship exists, the department may:~~

~~(a) review written contracts between the individual and the employing unit;~~

~~(b) interview the individual, co-workers, or the employing unit;~~

~~(c) obtain statements from third parties;~~

~~(d) examine the books and records of the employing unit;~~

~~(e) review filing status on income tax returns; and~~

~~(f) make any other investigation necessary to determine employment status.~~

~~(3)~~ (2) After investigation, the department may issue an initial written determination on whether an individual is an independent contractor. Any person or employing unit aggrieved by this initial determination may request investigation and a decision by the department's ~~Independent Contractor Central Unit (ICCU)~~ compliance and investigations bureau pursuant to ~~ARM 24.11.203 and~~ ARM Title 24, chapter 35, subchapters 2 and 3, within ten days of notice of the initial determination.

(a) A party is considered to have been given notice on the date a written notice is ~~personally delivered~~ served or three days after a written notice is mailed to the party.

(b) remains the same.

(4) remains the same, but is renumbered (3).

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, 39-51-204, 39-51-1109, 39-51-2402, 39-71-418, MCA

REASON: The proposed amendment is necessary to correct references to a department program and to clarify language regarding service. Section (2) is proposed to be removed because it is duplicative of ARM 24.35.202, which is incorporated into this rule.

24.11.2405 (24.40.XXX) STATUS OF CERTAIN PERSONAL ASSISTANTS (1) remains the same.

AUTH: 39-51-301, 39-51-302, 53-6-145, MCA
IMP: 53-6-145, MCA

REASON: The proposed transfer of this rule is necessary because the department proposes transferring the entirety of UI program's rules from ARM Title 24, chapter 11 to a new subchapter in ARM Title 24, chapter 40, to aid in organization and clarity of the rules.

E. Proposed Subchapter 6: Separation from Employment

24.11.451 (24.40.XXX) SIX-WEEK RULE (1) The department investigates each separation from insured ~~work~~ employment that occurred during the six weeks immediately ~~preceding~~ before the effective date of an initial or an additional claim. The department shall adjudicate all separations that occurred during the six-week period except:

(a) when the claimant separated from insured ~~work~~ employment with the same employer more than once, the department shall adjudicate only the last separation involving that employer; or

(b) when the claimant is being paid their regular wages during an administrative leave~~; or~~.

~~(c) where ARM 24.11.454A applies due to a valid notice.~~

(2) If the claimant did not separate from insured ~~work~~ employment during the six-week period, the department shall investigate and adjudicate the claimant's most recent separation from insured ~~work~~ employment that occurred ~~prior to~~ before the six weeks immediately preceding the effective date of the claim.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2301, 39-51-2302, 39-51-2303, 39-51-2304, MCA

REASON: The proposed amendments are necessary to remove language referencing the repealed rule, ARM 24.11.454A, and the reference is not an exception to the six-week rule as drafted. The determination of a valid notice of separation in ARM 24.11.454A, now NEW RULE X and NEW RULE XI, may require the department to adjudicate that separation; therefore, a valid notice of separation does not create an exception to the requirement that any separation occurring within the six weeks before the claim's effective date must be adjudicated.

NEW RULE X (24.40.XXX) LEAVING WORK (1) Following a claimant's notice of intent to leave work, the department shall determine the reason for the separation in the following manner.

(a) If a claimant's notice of intent to leave work is valid, the department shall consider the claimant to have left employment voluntarily as of the date identified by the valid notice.

(b) If a claimant attempts to retract a valid notice of intent to leave work and the employer does not accept the retraction, the department shall consider the claimant to have voluntarily left employment.

(2) If a claimant's notice of intent to leave work was not valid, the department shall consider the claimant to have been discharged by the employer.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2302, 39-51-2303, MCA

REASON: The proposed new rule is necessary because it contains (1) of ARM 24.11.454A.

NEW RULE XI (24.40.XXX) DISCHARGE BY EMPLOYER (1) Following an employer's notice of intent to discharge a claimant, the department shall determine the reason for the separation in the following manner:

(a) when an employer's notice of discharge is valid, the department shall consider the claimant to have been discharged, regardless of whether the claimant left employment voluntarily prior to the intended date of termination; or

(b) when an employer attempts to retract a valid notice of termination and the claimant does not accept the retraction, the department shall consider the claimant to have been discharged.

(2) When an employer's notice of discharge is not valid and the claimant left solely in response to the invalid notice, the department shall consider the claimant to have left employment voluntarily.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2302, 39-51-2303, MCA

REASON: The proposed new rule is necessary because it contains (2) of ARM 24.11.454A. The language is also clarified because a "notice of termination" may mean an employee is subject to a permanent layoff under the definition of "termination" in ARM 24.11.204(49). If a valid notice of termination is notice of a permanent layoff, it is not a "discharge" because a discharge is "a termination of the work relationship between an employer and a worker initiated by the employer, for reasons other than a lack of work," in ARM 24.11.204(14).

NEW RULE XII (24.40.XXX) CONSTRUCTIVE QUIT – LEAVING WORK

(1) A claimant is considered to have constructively quit employment:

(a) when an employer discharges a claimant for an act or omission that made it impracticable for the employer to utilize the claimant's services and the claimant knew or should have known that the act or omission would jeopardize the claimant's job and likely result in discharge; or

(b) when the claimant fails to meet specified conditions of employment, which may include but are not limited to:

(i) failure to meet license or permit requirements for employment; or

(ii) failure to maintain insurability.

(2) An employee who constructively quit employment initiated the separation and left work.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2302, 39-51-2303, MCA

REASON: The proposed new rule is necessary because it contains (3) of ARM 24.11.454A. Section (2) is necessary to clarify that a constructive quit is a separation from work initiated by the employee, and therefore is considered the employee leaving work.

NEW RULE XIII (24.40.XXX) LAYOFF OF TEMPORARY EMPLOYMENT – VOLUNTARY LAYOFF (1) When a claimant and an employer agree to temporary employment, the department shall consider the claimant to have been laid off due to lack of work when:

(a) the claimant completes the assigned work;

(b) a previously agreed upon verbal or written contract ends;

(c) the employer no longer has the same hours, wages, terms of employment, and working conditions available to the claimant; or

(d) the claimant has been hired by a client company of the employer as a result of a verbal or written employment agreement.

(2) When a claimant volunteers to be laid off from employment, the claimant is considered to be laid off for lack of work when:

(a) the employer has a written workforce reduction plan or policy that allows an employee to volunteer to be laid off due to a lack of work;

(b) the layoff is due to a lack of work; and

(c) the employer identifies the claimant as a claimant subject to the layoff.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2302, 39-51-2303, MCA

REASON: The proposed new rule is necessary because it contains (4) of ARM 24.11.454A and all of ARM 24.11.456, both repealed below.

24.11.457 (24.40.XXX) LEAVING WORK WITH OR WITHOUT GOOD CAUSE ATTRIBUTABLE TO THE EMPLOYMENT (1) and (1)(a) remain the same.

(b) the claimant left work that the department determines ~~to have become unsuitable~~ is no longer suitable work pursuant to ARM ~~24.11.485~~ [NEW RULE XXXI]; or

(c) the claimant left work within 30 days of returning to state-approved training, in accordance with ARM ~~24.11.475~~ [24.40.XXX APPROVAL OF TRAINING BY THE DEPARTMENT].

(2) and (2)(a) remain the same.

(b) unreasonable actions by the employer concerning hours, wages, terms of employment or working conditions, including, but not limited to, reductions of 20 percent or more in the ~~claimant's~~ customary wages or hours;

(c) a condition underlying a workers' compensation or occupational disease claim for which liability has been accepted by a workers' compensation insurer.

(i) If the ~~condition is one for which liability has not been accepted by the~~ workers' compensation insurer has not accepted liability for the condition, the department shall independently evaluate the condition to determine whether the condition appears to result from the ~~claimant's~~ employment.

(ii) If, after evaluation, the department determines by a preponderance of the evidence that the condition ~~appears to the satisfaction of the department to be~~ is ~~work~~ employment related, the department shall consider the condition to provide a compelling reason for leaving work; or

(d) remains the same.

(3) The claimant has the burden of proving their separation from employment was for good cause attributable to their employment.

AUTH: 39-51-301, 39-51-302, MCA
MP: 39-51-2302, 39-51-2304, 39-51-2307, MCA

REASON: The proposed amendments are necessary to clarify the burden used by the department to determine if a claim is due to a work-related injury when a claim has not been accepted by a workers' compensation insurance carrier. The amendments reflect that an individual has the burden of establishing the separation from employment was for good cause attributable to the employment pursuant to *Crouse v. State*, 2017 MT 254, ¶ 18, 389 Mont. 90, 403 P.3d 1260.

NEW RULE XIV (24.40.XXX) DISCHARGE FOR MISCONDUCT (1) The employer has the burden of proving that an employee was discharged for misconduct, as defined in 39-51-201 and 39-51-2303, MCA.

(2) A determination of misconduct must be supported by substantial evidence in the record. Substantial evidence is admissible, reliable evidence that a reasonable person would take as true in the normal course of events.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, 39-51-2303, MCA

REASON: The proposed new rule is necessary to direct a claimant or any other person to the statutory definitions for misconduct found in 39-51-201(19) and 39-51-2303, MCA, and to clarify that an employer's claim of employee misconduct must be proven by the employer and supported by substantial evidence in the record pursuant to *Bean v. Dep't of Labor & Indus.*, 1998 MT 222, ¶¶ 14-15, 290 Mont. 496, 965 P.2d 256.

24.11.462 (24.40.XXX) OFF-DUTY CONDUCT AS MISCONDUCT

(1) ~~While misconduct usually occurs during the claimant's normal working hours, "off-duty"~~ "Off-duty" conduct may constitute misconduct if it meets the criteria in 39-51-201, MCA, and ~~if~~ the employer shows by a preponderance of the evidence that such conduct:

(a) through (2) remain the same.

~~(3) The employer must demonstrate by a preponderance of the evidence that the off-duty conduct significantly affected the employment relationship.~~

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, 39-51-2303, MCA

REASON: The proposed amendments are necessary to clarify and simplify language.

NEW RULE XV (24.40.XXX) EFFECTIVE DATE OF SEPARATION FROM EMPLOYMENT (1) Except as provided in (2), an eligibility determination for a

claimant leaving employment or a claimant's discharge is effective on the Sunday of the week of the last date of employment.

(2) If the separating action occurs after the last date of employment but before the next regularly scheduled shift, the separation is effective the latest of the following dates:

(a) the week of the separating act;

(b) the week the claim was filed or reactivated; or

(c) the week the payment request is filed.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2101, MCA

REASON: The proposed new rule is necessary because it contains (8) of ARM 24.11.452A, repealed below.

F. Proposed Subchapter 8: Claims for Benefits

NEW RULE XVI (24.40.XXX) CLAIMS FOR BENEFITS (1) A claimant must file an initial claim by using the online portal, or by calling the department to request filing assistance. The claimant shall provide all information requested by the department for proper claim administration. The information required from the claimant includes, but is not limited to:

(a) the claimant's name, physical address, mailing address, and demographic data;

(b) the claimant's social security number;

(c) whether the claimant is a United States citizen and, if not, the claimant's alien registration permit number;

(d) whether the claimant has an existing claim in the current benefit year under any state or federal unemployment insurance or unemployment compensation law;

(e) whether the claimant is totally unemployed;

(f) whether the claimant is able to work, available for work, and seeking work; and

(g) the names and addresses of all employers the claimant worked for in the most recent 18 months, the beginning and ending dates of the employment for each employer, and the reasons for the claimant's separation from employment with each employer.

(2) The department may require the claimant to provide verification, written or otherwise, of any information the claimant provided or that was requested from the claimant in connection to the claim.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2101, 39-51-2102, 39-51-2103, 39-51-2104, 39-51-2105, 39-51-2106, 39-51-2107, 39-51-2108, 39-51-2109, 39-51-2110, 39-51-2401, MCA

REASON: The proposed new rule is necessary because it contains the basic information for filing a claim for benefits, and it replaces (1) and (2) of ARM 24.11.441, repealed below.

NEW RULE XVII (24.40.XXX) EFFECTIVE DATE, BACKDATING, AND CANCELLATION OF CLAIM (1) A claim is effective on the Sunday of the week in which the claim is filed and remains in effect until:

(a) the end of the benefit year; or

(b) the claim is cancelled.

(2) A claimant may request cancellation of a claim within ten days after the date of an initial or revised monetary determination. A cancellation request may be done through the online portal or by mail.

(3) The department may backdate a claim or grant a late request to cancel a claim if the claimant shows good cause for the delay in filing the claim or requesting cancellation.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, 39-51-2101, 39-51-2102, 39-51-2104, MCA

REASON: The proposed new rule is necessary because the effective date and cancellation of a claim was previously in (4) through (6) of ARM 24.11.441, repealed below.

NEW RULE XVIII (24.40.XXX) CLAIMANT AGENT DESIGNATION (1) A claimant may designate another person to serve as the claimant's agent and handle the claim on the claimant's behalf. To designate an agent, a claimant must complete an agent designation form either through the online portal or by contacting the department by mail or phone to request a form. The agent designation form specifies the limits of the agent's authority and the time period covered by the designation.

(2) Unless the claimant indicates otherwise on the agent designation form, the agent may do the following on behalf of the claimant:

(a) file a new claim, reactivate an inactive claim, or file a continued claim;

(b) provide information to the department and respond to department requests for information; and

(c) request a redetermination or appeal of a determination of benefit eligibility.

(3) Claimant may change, revoke, or renew the agent's designation at any time by notifying the department in writing either through the online portal or through the mail.

(4) An agent designation expires after one year from the date of the designation or when a new claim is filed, whichever occurs first.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-3201, MCA

REASON: The proposed new rule is necessary because it replaces ARM 24.11.210. The new rule allows for claimants to complete claimant agent designations online, and the rule simplifies the designation levels for an agent's authority.

NEW RULE XIX (24.40.XXX) INITIAL MONETARY DETERMINATION

(1) After filing an initial claim, a claimant will receive an initial monetary determination stating whether the claimant has sufficient wages to qualify for benefits.

(2) The initial monetary determination informs the claimant of the department's records from base period employers used to calculate the claimant's benefit amount, and the effective date of the claim.

(3) If a claimant's wage records have not been received, and the claimant was employed by an insured employer, the claimant may support their claimed wages by providing an affidavit and documentation establishing the amount of base period wages as follows:

(a) unpaid wages may be considered if the claimant completes a signed, dated, and notarized affidavit stating the following:

(i) the name and address of any employer from whom wages are due;

(ii) the amount of unpaid wages; and

(iii) the reasons why the wages have not been paid; and

(b) the claimant provides at least one of the following documents to show unpaid wages:

(i) a W-2 or 1099 form as required by the Internal Revenue Service;

(ii) a signed statement from the employer affirming the truth of the claimant's affidavit;

(iii) a copy of the employer's schedule of assets and liabilities filed in a bankruptcy proceeding showing the unpaid wage claim;

(iv) a copy of the claimant's wage claim filed with the department, if the department has not dismissed the wage claim; or

(v) a copy of a decision of the department or a court of competent jurisdiction stating that the wages are owed the claimant.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2105, 39-51-2201, 39-51-2202, 39-51-2203, 39-51-2204, MCA

REASON: The proposed new rule is necessary because it focuses on the procedural aspects of an initial monetary determination and contains (1), (2), (4), (5)(a), (5)(b), (7), and (8) of ARM 24.11.442.

NEW RULE XX (24.40.XXX) BASE PERIOD WAGE CALCULATION (1) A claimant's base period wages are the wages earned from a base period employer prior to the claimant's period of unemployment. A claimant's base period wages are used to calculate the claimant's benefit amount.

(a) For the purposes of this rule, base period wages are deemed to be "used" when the base period wages are:

(i) part of the calculation that establishes the monetary amount of benefits payable on the claim;

(ii) the basis for establishing the claim's benefit year; and

(iii) a sufficient amount to qualify the claimant for benefits, if the claimant is otherwise eligible to receive benefits with respect to that claim.

(b) Base period wages used to establish a monetary determination and a benefit year in any state, including Montana, may not be:

(i) used by this state to establish a second or subsequent monetary determination and benefit year; or

(ii) transferred by this state to another state for the purpose of combining wages and employers as provided by 39-51-504, MCA.

(2) The department shall consider the following payments as wages and assign the following payments to the following periods:

(a) Payments made for termination of insured employment generally known or described as severance pay, separation pay, termination pay, wages in lieu of notice, continuation of wages for a designated period of time following cessation of employment, or other similar payment, and payments made under an incentive, employee buy-out, or similar plan designed to produce a general or specific reduction in force by inducing employees to leave voluntarily or in lieu of involuntary termination, whether paid in a lump sum or incrementally over any period of time, are attributable to the quarter in which the separation from employment occurred.

(b) Accrued vacation and sick leave paid at or after separation, other than a temporary layoff, are attributable to the quarter in which the separation from employment occurred.

(c) Bonuses, awards, incentives, rewards, profit sharing, and stocks are attributable to the quarter the payment was issued.

(d) Holiday pay is attributable to the quarter the payment was issued.

(e) Payments received for accrued unused vacation, sick leave, compensatory time, or other similar leave when separation has not occurred or during periods of temporary layoff are attributable to the quarter in which the payment was issued. These payments are sometimes also known as a "cash-out" of leave benefits.

(f) Backpay and settlements, in all cases, will be prorated back over the time the payment represents. Only the portion of the payment that is wages which would have been earned, or wages earned and not paid, will be applied to weeks claimed and quarterly wages.

(g) Use of vacation or sick leave, compensatory time, or other similar leave paid during the course of insured employment, including periods of temporary layoff, for time off from employment for vacation, whether voluntary or mandated, sick leave, or other leave with pay is attributable to the quarter the payment was issued.

(h) Royalties, residual payments, and commissions are attributable to the quarter in which the payment was issued.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2105, 39-51-2201, 39-51-2202, 39-51-2203, 39-51-2204, MCA

REASON: The proposed new rule is necessary because it contains (1)(a), (5), and (6) of ARM 24.11.442.

NEW RULE XXI (24.40.XXX) WEEKLY PAYMENT REQUESTS (1) In order to receive benefit payments, a claimant must file weekly payment requests using the online portal. If the claimant is unable to file online, the claimant may contact the department to request and file weekly payment requests by mail.

(2) Weekly payment requests are timely if the request is filed after the week claimed, and before midnight of the Saturday seven calendar days later.

(3) A claimant must file timely weekly payment requests during the claim adjudication and appeal process to receive benefits or waiting period credit for the intervening week or weeks.

(4) A claimant must completely answer each question on the weekly payment request form and certify that the claimant's responses are true and accurate to the best of the claimant's knowledge.

(5) A claimant must report all hours worked for wages from all work for each week the claimant requests benefit payments. Hours shall be reported for the week the work was performed. A claimant must also report any hours claimed for pay in lieu of work such as holiday pay, or use of vacation, sick, or other paid leave, regardless of whether the use of leave was voluntary or mandatory.

(6) A claimant must report all gross wages earned from all work for each week the claimant requests benefit payments. Gross wages include payment or hours worked or pay in lieu of work such as holiday pay, or use of vacation, sick, or other paid leave, regardless of whether that use was voluntary or mandatory.

(a) Termination pay must be reported as wages for the week in which the termination occurred.

(b) The following payments from an employer must be reported as wages for the week in which the payment was issued:

(i) A bonus, award, incentive, reward, or profit sharing, whether in cash or in the form of securities;

(ii) Accrued unused vacation, sick leave, or other leave without a termination from employment, commonly referred to as a "cash-out" of accrued leave;

(iii) A royalty or residual payment, or payment for a commission;

(c) Payment is issued on the date printed on a physical check, the date of release of electronic funds transfer, or the date cash was tendered. The department may allow up to 14 calendar days for reporting discrepancies.

(7) The department may allow a late payment request if the claimant shows good cause for the late failing. If the department determines that the claimant did not have good cause for the delay in filing, benefits or waiting week credit must be denied, and the claimant may be required to reactivate the claim as provided in [NEW RULE XXVI].

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, Title 39, chapter 51, parts 21 through 23, MCA

REASON: The proposed new rule is necessary because it replaces ARM 24.11.443, repealed below. The new rule removes references to outdated technology and requirements for filing claims for benefits.

24.11.447 (24.40.XXX) WORK REGISTRATION AND EXCEPTIONS ~~(1) In accordance with 39-51-2102 and 39-51-2104, MCA, all claimants must register for work with the Workforce Services office serving the area in which the claimant resides, unless excused by the department. All claimants who are required to register must also maintain their work registration in an active status (as defined by the Workforce Services Division) as one of the eligibility conditions to receive benefits.~~

~~(2) A claimant who is excused from registering is not required to actively seek work, but must meet all other eligibility requirements in order to receive benefits. Work registration exceptions are limited to the following common circumstances:~~

~~(a) Job attached claimants, as defined in ARM 24.11.452A, must maintain contact with the employer to whom they are attached, and must return to work when requested by the employer.~~

~~(b) Union attached claimants, as defined in ARM 24.11.452A, must comply with the union's requirements to be considered a member in good standing and be listed on the union's out-of-work list.~~

~~(c) Labor dispute claimants who are unemployed due to a labor dispute may be excused from registering until a determination under ARM 24.11.465A is issued. If benefits are allowed, the claimant must either register for work or must provide sufficient information to the department to qualify for an exception as job attached or union attached within the time period specified in ARM 24.11.452A.~~

~~(d) Individuals participating in approved federal training programs under 39-51-2602, MCA.~~

~~(3)~~ (1) Registration exceptions may be granted to ~~other~~ individuals or groups if the department finds the exception to be consistent with the purpose of the unemployment insurance program. Registration exceptions cannot be granted if prohibited by state or federal laws governing certain unemployment insurance programs.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2104, MCA

REASON: The proposed amendments are necessary to remove language that is duplicative of 39-51-2104, MCA, the definitions for "job attached" and "union attached" in ARM 24.11.204(25) and (53) and ARM 24.11.465A. Section 39-51-2104(3)(c), MCA, allows the department discretion to determine who is required to register with workforce services, and a claimant's registration with the department's workforce services is no longer a federal requirement for benefits.

NEW RULE XXII (24.40.XXX) WORK SEARCH CONTACTS (1) A valid work search contact requires a claimant to directly contact an employer, or an authorized agent of an employer, and complete a job application or submit a resume

that enables the employer to contact the claimant to arrange an interview or to commence employment. The claimant must possess the prior work experience, knowledge, skills, and abilities to qualify for the specific job opening.

(2) A valid work search contact includes a claimant's registration for work at a temporary employment agency.

(3) A valid work search does not include seeking self-employment, working as an independent contractor, reporting part-time work, or registering with the department's workforce services program.

(4) A claimant shall report at least one valid work search contact with a different employer, or for a different position with the same employer, for each consecutive week that the claimant requests benefit payments.

(5) The claimant shall retain all work search contact information necessary for verification by the department. The department may request all information relevant to the work search contact.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2104, 39-51-2115, 39-51-2304, MCA

REASON: The proposed new rule is necessary because it replaces ARM 24.11.453A. The new rule removes language that is duplicative of ARM 24.11.475, and it removes references to repealed ARM 24.11.470 and 24.11.471.

NEW RULE XXIII (24.40.XXX) DETERMINATIONS OF BENEFIT ELIGIBILITY AND QUALIFICATION (1) In addition to the determination issued under [NEW RULE XIX], the department shall adjudicate each issue affecting a claimant's eligibility and qualification for benefits. Issues subject to adjudication include initial eligibility issues and any issues that arise during the period of benefit payments. The department shall issue a written decision for each individual issue affecting the claimant's benefits.

(2) When the department identifies an issue that requires adjudication, including when the information provided by the claimant and employer differs substantially regarding claimant's eligibility for benefits, the department shall investigate and adjudicate the claim as follows:

(a) The department shall promptly request information from the claimant, the employer, and any other sources of relevant information within eight days pursuant to [NEW RULE I].

(b) The department shall allow the claimant to review and respond to the information obtained by the department and to submit any rebuttal evidence.

(c) If the claimant fails to provide the requested information within the time period designated by the department, the department may make an adverse ruling against the claimant, including a determination that the claimant is unavailable for work as provided in 39-51-2104, MCA.

(d) If the employer fails to provide information within the time period, the employer may be subject to [NEW RULE III].

(3) If a claimant is determined ineligible or disqualified for benefits due to an act or circumstance that occurred prior to the effective date of an initial, additional, or

reopened claim, the claimant is deemed ineligible or disqualified for benefits as of the date of the act or circumstances that caused the ineligibility or disqualification.

(4) If a claimant is determined to have failed the requirements of benefit eligibility due to an act or circumstance that occurred during the benefit period of a prior or current claim, the claimant is deemed ineligible or disqualified for benefits as of the Sunday of the week the act or circumstance resulting in ineligibility or disqualification occurred.

(5) A claimant who is determined to be ineligible or disqualified for benefits may be required to pay back any benefits received after the date the claimant was determined to be ineligible or disqualified for benefits.

(6) The department shall provide written notice of a determination to all interested parties.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-605, 39-51-2301, 39-51-2302, 39-51-2303, 39-51-2304, 39-51-2402, 39-51-2507, 39-51-2508, 39-51-2511, 39-51-2602, 39-51-3201, 39-51-3202, 39-51-3206, MCA

REASON: The proposed new rule is necessary because it contains the department's procedure for initial determination of issues affecting a claimant's benefits. The new rule contains (1) through (7) of ARM 24.11.450A, repealed below.

NEW RULE XXIV (24.40.XXX) REDETERMINATION (1) An interested party may request a redetermination by submitting a request to the department, by the online portal or mail, together with any additional information the party wishes the department to consider within ten days of the service of the determination.

(2) The department shall provide any additional relevant information to all interested parties and allow the interested parties to review, respond, and submit rebuttal evidence, if any, within eight days of the department's request for rebuttal.

(3) The department shall provide notice of the redetermination to all interested parties.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-605, 39-51-2402, MCA

REASON: The proposed new rule is necessary because it clarifies the procedure for requesting redetermination and contains (8), (9), (10), and (11) of ARM 24.11.450A, repealed below.

NEW RULE XXV (24.40.XXX) DEPARTMENT REDETERMINATION OF BENEFIT REQUALIFICATION OR RESTORED ELIGIBILITY – TIME LIMIT (1) The department may, in its sole discretion, make a redetermination of a claimant's disqualification for benefits under 39-51-2302, 39-51-2303, or 39-51-2304, MCA, or ineligibility under 39-51-2104, MCA, for up to two years after the date of the original determination.

(2) The department shall consider all new or discovered information to make the redetermination.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-605, 39-51-2402, MCA

REASON: The proposed new rule is necessary because it clarifies that a request for redetermination is only required in limited circumstances at the discretion of the department. The new rule contains (8) and (12) of ARM 24.11.450A, repealed below.

NEW RULE XXVI (24.40.XXX) INACTIVE CLAIMS--REACTIVATING A CLAIM (1) A claim for benefits becomes inactive if a claimant does not request benefit payments for four consecutive weeks. If a claim remains inactive after the end of the claim's benefit year, the claimant must file a new claim for benefits.

(2) A claimant may reactivate a claim during the claim's benefit year by:

(a) calling the department and requesting that the claim be reactivated; or

(b) accessing the department's online portal and following the instructions to reactivate the claim.

(3) To reactivate a claim, a claimant must provide any information relevant to claim qualifications or eligibility, including any separation from insured employment.

(4) A reactivated claim is effective on the Sunday of the calendar week in which the claimant reactivates the claim.

(5) The department may backdate a reactivated claim if the claimant shows good cause for the delay in reactivating the claim.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2103, 39-51-2104, 39-51-2401, MCA

REASON: The proposed new rule is necessary because it replaces ARM 24.11.445.

G. Proposed Subchapter 9: Circumstances Affecting Benefit Eligibility and Qualifications

NEW RULE XXVII (24.40.XXX) CLAIMANT'S FAILURE TO UPDATE MAILING ADDRESS (1) The department may determine a claimant to be ineligible for benefits when a claimant fails to provide the department with an updated mailing address within three days of a change to the claimant's mailing address.

(2) The department shall reinstate the claimant's benefit eligibility upon a receipt of an updated mailing address if the claimant is otherwise eligible for benefits.

(3) The benefit eligibility may be backdated if the claimant shows good cause for the delay in updating the mailing address.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2104, MCA

REASON: The proposed new rule is necessary because it contains (6) of ARM 24.11.452A, repealed below. The department requires a current mailing address for all claimants for claim administration purposes including communication and claimant identification.

24.11.475 (24.40.XXX) APPROVAL OF TRAINING BY THE DEPARTMENT – ADDITIONAL TRAINING BENEFITS ~~(1) The department may pay benefits to a claimant engaged in a state-approved training program.~~

(2) through (4) remain the same but are renumbered (1) through (3).

~~(5) The department shall not disqualify a claimant under the provisions of 39-51-2302, MCA, when the claimant voluntarily leaves employment within 30 days of resuming participation in a state-approved training program.~~

~~(6)~~ (4) Upon the department's written approval of a claimant for a state-approved training program, the department shall notify the claimant of the availability of additional training benefits~~, pursuant to ARM 24.11.476~~.

(5) A claimant in good standing in a state-approved training program may apply to the department for additional training benefits.

(a) Additional training benefits may be paid during break periods of less than 30 days, and weeks including at least one day of training.

(b) Additional training benefits may not exceed an amount equal to 26 times the claimant's regular weekly benefit amount.

(c) Additional training benefits terminate when the following occurs:

(i) the claimant completes the training program;

(ii) the claimant exhausts the maximum additional training benefits payable;

(iii) the claimant leaves or is expelled from the training program; or

(iv) the claimant becomes eligible to file a new, regular unemployment benefits claim at the end of the benefit year.

(7) remains the same but is renumbered (6).

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2116, 39-51-2307, 39-51-2401, MCA

REASON: The proposed amendments are necessary to remove language that is duplicative of statute in (1). New (5) regarding additional training benefits is proposed to be transferred from ARM 24.11.476, repealed below.

NEW RULE XXVIII (24.40.XXX) FOREIGN TRAVEL (1) The department may deny benefits if the claimant is residing in or is traveling to or in a foreign country.

(2) The department may allow benefits to be paid to a claimant who resides in or travels to a country that has executed a reciprocal agreement with the United States government regarding unemployment insurance.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, MCA

REASON: The proposed new rule is adopted because it contains (5)(c)(iv) and (7) of ARM 24.11.452A, repealed below.

24.11.458 (24.40.XXX) SELF-EMPLOYMENT (1) The department may determine a claimant who is engaged in self-employment to be eligible for benefits ~~under 39-51-2115, MCA, or ARM 24.11.452A~~ when the claimant is able, available for, and actively seeking suitable insured ~~work~~ employment and is willing to accept an offer of or a referral to suitable insured ~~work~~ employment, even if acceptance of the offer of work would require the claimant to ~~forego~~ forgo all or a part of the self-employment venture.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2101, 39-51-2115, MCA

REASON: The proposed amendments are necessary to remove unnecessary statutory references and references to repealed rules.

24.11.463 (24.40.XXX) LIE DETECTOR TESTS--DRUG AND ALCOHOL TESTING (1) A claimant will not be disqualified for benefits under this chapter solely for the reason that the claimant is denied ~~work~~ employment or continuation of ~~work~~ employment for refusing to submit to a polygraph test or any form of a mechanical lie detector test, or on the basis of the results of any such test.

~~(2) A claimant cannot be disqualified for benefits under this chapter solely for refusal to submit to drug or alcohol testing required by an employer or prospective employer, or on the basis of the results of such a test, unless the testing procedures fully comply with federal drug and alcohol testing statutes and regulations applicable to private sector workers, or the provisions of the Workforce Drug and Alcohol Testing Act found in Title 39, chapter 2, MCA. This rule does not apply to a drug test for marijuana or marijuana products that was administered to an individual who is a registered cardholder under Title 16, chapter 12, part 5, MCA.~~

~~(3)~~ (2) An individual disqualified for benefits ~~in accordance with (2)~~ based on 39-51-2303(3), MCA remains disqualified until the individual has performed services:

(a) and (b) remain the same.

(4) remains the same, but is renumbered (3).

AUTH: 39-51-301, 39-51-302, MCA
IMP: ~~39-51-2302,~~ 39-51-2303, 39-51-2304, MCA

REASON: The proposed amendments are necessary to remove (2) because it is duplicative of 39-51-2303, MCA, and to correct implementing statutes.

NEW RULE XXIX (24.40.XXX) SERVICES IN EDUCATIONAL INSTITUTIONS (1) Individuals who perform services for an academic institution in an instructional, research, or principal administrative capacity include the following:

(a) Individuals in an instructional capacity include teachers in formal classrooms and seminars, tutors, and those who direct or assist students in research and learning.

(b) Individuals in a research capacity include those who direct a research project and those staff directly engaged in gathering, correlating, and evaluating information and making findings.

(c) Individuals in a principal administrative capacity include school principals, school superintendents, officers of the institution, the board of directors, business managers, deans, associate deans, university public relations directors, comptrollers, development officers, chief librarians, registrars, and any individuals who, although they may lack official titles, actually serve in a principal administrative capacity.

(2) "Reasonable assurance" means that there is a written, oral, or implied agreement that the individual will perform services in the same capacity in the next academic year or term.

(3) An individual who performed services in the first academic year or term has reasonable assurance if the educational institution gave the individual a bona fide offer of the same job in the same capacity for the next academic year or term, whether or not the individual accepts the bona fide offer.

(4) An individual who performed services in the first of any two academic years or terms for an educational institution has reasonable assurance of performing services in the same capacity in the second academic year or term, regardless of the following:

(a) the individual is required to reapply for a position;

(b) the individual has advised the institution of the individual's intention not to return to employment in the subsequent academic year or term; or

(c) the educational institution has advised the individual or the department that employment in the next academic year or term is contingent upon adequate funding or enrollment.

(5) An individual does not have reasonable assurances in the following circumstances:

(a) if the economic terms and conditions are substantially less than the economic terms and conditions of the job in the previous academic year or term; or

(b) if an educational institution advised the individual or the department that employment in the next academic year or term is contingent upon adequate funding or enrollment; and

(i) the individual has been given unequivocal notice that the individual will not be rehired for the subsequent academic year or term;

(ii) the department determines that there is not a pattern, either as to the particular individual or as to the class of employees to which the individual belongs, of such notice being followed by subsequent reemployment by the educational institution; and

(iii) the department determines that there is not substantial evidence of a continuing employment relationship between the individual and the educational institution during the period between the first and next academic years or terms, including but not limited to, the continuance of employee benefits during the period.

(6) If the department determined that an individual did not have reasonable assurances, and the individual was later given reasonable assurances, any benefits that were paid to the individual based on the initial determination of no reasonable

assurances shall cease starting on the date the individual received reasonable assurances.

(7) If the department determined that an individual had reasonable assurances, but the individual continues to be unemployed when the academic year or term begins, the individual may be allowed benefits:

(a) from the date the offer of employment was withdrawn; or

(b) from the date the claimant was given reasonable assurance if it is determined that the original offer of employment was not a bona fide offer.

(8) Individuals at educational institutions or educational service agencies who are customarily employed for the educational institution or educational service agency during the period between academic years or terms or during customary vacation periods or holiday recesses within terms are not subject to the provisions of 39-51-2108, MCA.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2108, MCA

REASON: The proposed new rule is necessary because it clarifies and reorganizes the majority of the sections from ARM 24.11.464, repealed below. Subsection (1)(c)(ii) of ARM 24.11.464 is repealed because it is duplicative of 39-51-2108(3), MCA, and (1)(d) is repealed because "same capacity" is self-explanatory in the context of the rules.

NEW RULE XXX (24.40.XXX) DISQUALIFICATION DUE TO STRIKE

(1) For the purposes of 39-51-2305, MCA, and of this rule, the following definitions and interpretations apply:

(a) "Grade or class of workers" means:

(i) workers who are members of a particular bargaining unit; or

(ii) workers whose jobs are similar or integrated or who have substantial mutual interests or similarities in wages, hours, and other conditions of work.

(b) "Labor dispute" means any controversy concerning terms, tenure, or conditions of work or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of work, regardless of whether the disputants stand in the proximate relation of employer and employee.

(c) "Strike" means a concerted cessation of work by workers in an effort to obtain or to resist some change in conditions of work.

(2) A worker is participating in the labor dispute if the worker:

(a) is picketing, refusing to cross a picket line, or refusing to report for work; or

(b) is a member of a bargaining unit that voted to authorize the strike.

(3) A worker is financing the labor dispute if the worker, or the worker's union, has contributed time or money, directly or through a special assessment:

(a) to affect the outcome of the labor dispute;

(b) to further the objectives of the strike; or

(c) to provide aid or support to the union or workers participating in the strike.

(4) A worker is directly interested in the labor dispute if, immediately before the strike began, the worker:

(a) is of the same grade or class of workers as the workers participating in or financing the strike; and

(b) is employed at the same factory, establishment, or premises as the workers who are participating in or financing the strike.

(5) The factors enumerated in (2), (3), and (4) are not exhaustive. The department may consider factors not listed here to determine a worker's participation, financing, or direct interest in a labor dispute. The department's determination must be supported by a preponderance of the evidence and as a matter of law.

(6) If a state or federal agency, or court with jurisdiction, determines that the strike was based on the employer's unfair labor practice or other violation of law pertaining to hours, wages, or other conditions of work, a worker who was disqualified from benefits under this rule will become qualified on the Sunday of the week the determination of the employer's unlawful conduct is made.

(7) If no violation of law is found under (6), a worker who is disqualified from benefits under this rule will remain disqualified until the end of the week in which:

(a) the strike is abandoned, and the worker, or the worker's union, makes an unconditional offer to return to work; or

(b) there has been a complete and bona fide termination of the work relationship between the worker and the employer. The permanent replacement of a striking worker will be considered to constitute a complete and bona fide severance of the work relationship between the worker and the employer only upon a final determination by a state or federal agency or court with jurisdiction to make such a determination that the worker has no rights of reinstatement.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2305, MCA

REASON: The proposed new rule is necessary because it replaces ARM 24.11.465A, and it removes language that is internally repetitive and duplicative of 39-51-2305, MCA. Section (6) is also updated to reflect that a worker becomes eligible for benefits the week of the determination of the employer's unlawful conduct, which is consistent with 39-51-2305(3), MCA, and other provisions restoring eligibility under these rules, such as NEW RULE XXV.

24.11.469 (24.40.XXX) DOMESTIC VIOLENCE INELIGIBILITY -- REQUALIFICATION (1) and (2) remain the same.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2111, MCA

REASON: The proposed transfer of this rule is necessary because the department proposes transferring the entirety of UI program's rules from ARM Title 24, chapter 11 to a new subchapter in ARM Title 24, chapter 40, to aid in organization and clarity of the rules.

24.11.472 (24.40.XXX) PENSION BENEFIT REDUCTION ~~(1) For purposes of this rule, a "pension" means pension payments, retirement benefits, retirement pay, annuity, or similar periodic payment made to an individual based on previous work. Severance or separation pay is not a "pension" payment.~~

~~(2) The department shall reduce a claimant's weekly unemployment benefit by the amount claimant receives or constructively receives from a pension plan that was maintained or contributed to by a base period employer.~~

~~(3) When no base period employer contributed to claimant's pension plan, the department shall not reduce a claimant's weekly unemployment benefit by the pension payment.~~

~~(4)~~ (1) The department shall presume a claimant made no monetary contribution to claimant's pension plan. A claimant may overcome this presumption by providing written proof to the department demonstrating that the claimant made an actual monetary contribution to the pension plan. When a claimant made direct monetary contribution to the pension plan, the department shall not reduce a claimant's weekly unemployment benefit by the amount of the pension payment.

~~(5)~~ (2) ~~The claimant must promptly provide to the department all information requested by the department.~~ Within eight days of claimant's receipt of correspondence from the pension plan administrator concerning claimant's pension entitlement or the amount of claimant's pension payments, claimant must provide the department with copies of the correspondence.

(6) through (8) remain the same but are renumbered (3) through (5).

~~(9) Social security retirement and social security disability payments are not deductible from unemployment benefits under this rule.~~

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2203, MCA

REASON: This rule is amended to remove language that is duplicative of 39-51-2203, MCA. The definition of "pension" in (1) is transferred to ARM 24.11.204 DEFINITIONS.

NEW RULE XXXI (24.40.XXX) WORK NO LONGER SUITABLE

(1) Suitable work for an individual may become unsuitable due to circumstances beyond the individual's or employer's control. When adjudicating a work refusal or separation from work, the department shall consider previously suitable work as not suitable when:

(a) an individual has made a good faith effort to comply with licensing requirements or governing regulations but has failed to pass the required course(s) or licensing exam; or

(b) an individual has submitted to the department an individualized determination of work unsuitability due to the individual's physical or mental disability, certified and signed by a health care provider.

(2) The individual bears the burden of proof that work is not suitable.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-2104, 39-51-2304, MCA

REASON: The proposed new rule is necessary because it contains (4) and (5) of ARM 24.11.485, repealed below.

NEW RULE XXXII (24.40.XXX) SUITABLE WORK FOR EXTENDED BENEFITS (1) If the department determines that a claimant who has exhausted regular benefits has a reasonable chance of securing employment during the four weeks after regular benefits are exhausted, "suitable work" is defined by the requirements in 39-51-2304, MCA.

(2) If the department determines that a claimant who has exhausted regular benefits does not have a reasonable chance of securing employment in the four weeks after regular benefits are exhausted, "suitable work" for purposes of extended benefits is defined as the requirements in 39-51-2304, MCA, and the following criteria:

(a) the gross average weekly wages for the work exceeds the claimant's extended weekly benefit amount, plus the amount of any supplemental unemployment benefits (as defined in 26 U.S.C. 501(c)(17)(D), as amended);

(b) the position does not pay less than the higher of:

(i) the federal minimum wage (29 U.S.C. 206, as amended); or

(ii) any applicable state or local minimum wage; and,

(c) the position was offered to the claimant in writing or was listed with an employment office.

(3) The department shall presume that a claimant does not have a reasonable chance of securing employment during the four weeks after regular benefits are exhausted. The department may change this presumption upon evidence of improved opportunities for employment.

(4) The department shall notify the claimant in writing of the determination of the claimant's reasonable chances of securing employment, and the department may change the determination if the department is provided with evidence of changed circumstances.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2508, MCA

REASON: Section 39-51-2508(5), MCA, requires the department to adopt a definition of "suitable work" specifically for extended benefits in accordance with the requirements of 26 U.S.C. § 3304.

H. Subchapter 11: Fraud, Penalties, and Benefit Overpayments

NEW RULE XXXIII (24.40.XXX) FRAUD DETERMINATION - FALSE STATEMENT OR FAILURE TO DISCLOSE (1) If the department identifies information indicating possible fraud, meaning the department has reason to believe a claimant may have made a false statement or representation or failed to disclose a material fact in order to obtain or increase benefits, the department shall investigate and adjudicate the issue pursuant to the procedures in [NEW RULE XXIII]. The

department shall apply the specific analysis below in (2) or (3) and (4) and (5) to any determination of fraud.

(2) The department may, in its sole discretion, make a redetermination of fraud for up to three years after the date of the claimant's original determination.

(3) A claimant will be determined to have made a false statement or representation knowing it to be false to obtain or increase benefits upon a finding that:

(a) the claimant, or the claimant's agent, personally made the statement or representation in question;

(b) the claimant, or the claimant's agent, knew that the statement or representation was false; and

(c) the statement or representation was made in connection with the claimant's claim for benefits and was material to a determination of the claimant's benefit entitlement.

(4) A claimant will be determined to have knowingly failed to disclose a material fact to obtain or increase benefits upon a finding that:

(a) the claimant, or the claimant's agent, had knowledge of the fact in question;

(b) the fact in question was material to a determination of the claimant's benefit entitlement;

(c) the claimant, or the claimant's agent, failed to disclose the fact in question; and,

(d) the claimant, or the claimant's agent, knew that the fact in question was required to be disclosed to the department for the proper administration of the claim.

(5) A determination or decision finding fraud under (3) or (4) must be supported by a preponderance of the evidence and specifically cite the evidence in support of each subsection.

(6) A determination or decision finding fraud under (3) or (4) shall impose the appropriate administrative penalty pursuant to [NEW RULE XXXIV].

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2402, 39-51-3201, MCA

REASON: The proposed new rule is necessary because it contains (1) through (3) of ARM 24.11.459. The new rule includes the three-year statutory deadline for a determination of fraud in 39-51-2402, MCA.

NEW RULE XXXIV (24.40.XXX) CALCULATION OF ADMINISTRATIVE PENALTY (1) The number of weeks of disqualification imposed pursuant to a determination of fraud under [NEW RULE XXXIII], is determined as follows:

(a) for each week the department determined a claimant made a false statement or representation or failed to disclose a material fact not involving a separation from employment, two weeks of disqualification are imposed;

(b) for each week the department determined a claimant made a false statement or representation or failed to disclose a material fact, involving a separation from employment, six weeks of disqualification are imposed;

(c) an additional eight weeks of disqualification are imposed for each determination or decision, dated within three years of the date of the department's determination under (a) or (b), that imposed a disqualification for any number of weeks; and

(d) any weeks of disqualification imposed as provided in (a) and/or (b) must be imposed for each determination and served consecutively, not concurrently.

(2) A week is counted as a week of disqualification only if:

(a) the claimant has filed a weekly payment request for the week;

(b) the claimant is otherwise eligible for and qualified to receive benefits for the week;

(c) the week has not been used to satisfy the waiting week requirement; and

(d) the maximum benefit amount for the benefit year in which the week begins has not been exhausted.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-3201, MCA

REASON: The proposed new rule is necessary because it contains (4) and (5) of ARM 24.11.459. The new rule simplifies the language and removes unnecessary statutory references.

NEW RULE XXXV (24.40.XXX) NOTICE OF BENEFIT OVERPAYMENT

(1) If any decision results in a benefit overpayment, the department shall provide the claimant with separate notice of the amount of benefit overpayment.

(2) When the department determines a benefit overpayment occurred pursuant to a determination of fraud under [NEW RULE XXXIII], the department shall add a penalty to the benefit overpayment.

(3) The separate benefit overpayment notice may be appealed only to challenge the accuracy of the amount of the benefit overpayment.

(4) Any benefit overpayment must be repaid to the department, regardless of the cause of the benefit overpayment, unless the department waives recovery of the benefit overpayment under [NEW RULE XXXVI] or [NEW RULE XXXVII].

(5) A benefit overpayment created when an interested party exercises their right to appeal a department determination or decision pursuant to these rules and Title 39, chapter 51, MCA, is a normal part of claim administration and is not eligible for a waiver.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-3206, MCA

REASON: The proposed new rule is necessary because it replaces and simplifies the substance of ARM 24.11.1205.

NEW RULE XXXVI (24.40.XXX) WAIVER OF OVERPAYMENT RECOVERY

(1) Once a decision that resulted in a benefit overpayment becomes final, a claimant may request that the department waive recovery of the benefit overpayment by writing or calling the department to request assistance.

(2) The department must deny waiver of benefit overpayment recovery that resulted from fraud pursuant to [NEW RULE XXXIII], or if a claimant is at fault by concealing or misrepresenting material facts. A claimant concealed or misrepresented material facts for purposes of this rule, even if unintentionally, in circumstances including, but not limited to, the following:

(a) before benefits were paid, the claimant failed to report or misrepresented a fact or circumstance regarding benefit eligibility or qualification;

(b) the claimant failed to read or respond to the department's requests for information, questions, or other communications that were necessary to determine the claimant's eligibility and qualification for benefits;

(c) the claimant failed to report or incorrectly reported a separation from employment while requesting benefits; or

(d) the claimant failed to report or incorrectly reported all hours and earnings from any insured employer during any week the claimant worked and requested benefits.

(3) The department may waive recovery of all or a portion of a benefit overpayment when a claimant meets the requirements of (1) and (2) and one or more of the following circumstances exist:

(a) benefit overpayment was the result of an incorrect monetary determination by the department due to minor errors in employer reporting;

(b) benefit overpayment resulted from department failure to consider relevant written documentation provided in a timely manner by a claimant, employer, or third party prior to the department's determination or redetermination;

(c) benefit overpayment resulted from claimant's reliance upon erroneous written information provided by department; or

(d) recovery of the benefit overpayment would cause a long-term financial hardship on the claimant pursuant to [NEW RULE XXXVII].

(4) Benefit overpayment does not constitute department error when the implementation of new state or federal law requires the department to revise a claimant's state benefit claim or monetary determination and to reduce or deny benefits retroactively.

(5) After consideration of a claimant's request for waiver, including a financial hardship waiver, the department shall notify the claimant of the waiver determination to grant or deny the request.

(6) Repayment of a benefit overpayment by offset of benefits shall continue until the department's waiver determination becomes final. If the waiver determination approves claimant's request for waiver, the department shall reimburse claimant for repayments collected after the date the claimant's written request for waiver was received by the department.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-3206, MCA

REASON: The proposed new rule is necessary because it contains the process for a claimant to request a waiver of recovery of benefits overpayments, transferred from (2), (3), (4), (6), and (8) of ARM 24.11.1207, repealed below.

NEW RULE XXXVII (24.40.XXX) FINANCIAL HARDSHIP WAIVER OF OVERPAYMENT RECOVERY (1) In addition to the requirements for waiver in [NEW RULE XXXVI], a claimant may request the department waive recovery of the benefit overpayment based on the claimant's long-term financial hardship. The claimant may make the request using the online portal, or by calling the department to request a paper form.

(2) The claimant shall provide documentation of monthly household income, assets, and expenses as requested by the department. The department may request additional documentation or verification of any amounts or documents provided. The department may also disallow or adjust any claimed expenses that the department deems unreasonable.

(3) The department shall determine recovery of the benefit overpayment will cause a claimant long-term financial hardship when:

(a) the sum of the claimant's average monthly household cash flow and the net value of the claimant's household assets equals an amount less than the identified amount of the benefit overpayment; and

(b) no evidence demonstrates that the sum of claimant's average household monthly cash flow and net value of the claimant's household assets are likely to exceed the amount of the benefit overpayment within 12 months of the date of the claimant's request for waiver.

(4) If a claimant's request for waiver is denied, a claimant may submit a new request for waiver if the claimant's financial situation has significantly changed since the prior request was denied.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-3206, MCA

REASON: The proposed new rule is necessary because it contains requirements for requesting a financial hardship waiver of recovery of a benefits overpayment, transferred from (5) and (7) of ARM 24.11.1207, repealed below. Section (2) of the new rule gives the department discretion in determining what proof is required for a claimant to prove income and expenses, which replaces the specific list of documentation provided for in (1) of ARM 24.11.1207, repealed below.

I. Proposed Subchapter 12: Interstate Claims and Interstate Overpayment Recovery

NEW RULE XXXVIII (24.40.XXX) ADOPTION OF NASWA INTERSTATE CLAIM PROCESSING PROCEDURES (1) Interstate claims are governed by the National Association of State Workforce Agencies (NASWA)'s Interstate Benefit Payment Plan of 1938, to which the department is a signatory, and the Interstate Arrangement for the Combining of Employment and Wages of 1971, 20 CFR § 616.

(2) NASWA maintains the Unemployment Insurance Interstate Connection Network (UI ICON) website so every state UI agency, including the department, can request and receive data for use in the filing and processing of combined wage claims, military, and federal claims. Each jurisdiction, including this state, is required

to keep their jurisdiction's UI claim processing information current on the UI ICON website.

(3) Information for processing interstate claims is available on the NASWA website, or by contacting the department.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, MCA

REASON: The proposed new rule is necessary because the processes and procedures for processing interstate claims are maintained online by NASWA, and it is duplicative to repeat those procedures in these rules. The new rule replaces ARM 24.11.511, 24.11.515, 24.11.516, 24.11.517, 24.11.518, 24.11.521, 24.11.523, 24.11.525, 24.11.531, and 24.11.534.

NEW RULE XXXIX (24.40.XXX) ADOPTION OF 2013 INTERSTATE RECIPROCAL OVERPAYMENT RECOVERY ARRANGEMENT (1) The department adopts by reference the National Association of State Workforce Agencies (NASWA) 2013 Interstate Reciprocal Overpayment Recovery Arrangement (IRORA), to which the department is a signatory, to govern the recovery of improper payments of state and federal unemployment insurance benefits. The department may recover improper benefit payments from individuals filing for benefits under the Interstate Benefit Payment Plan, the Interstate Arrangement for the Combining of Employment and Wages, or intrastate under any state's law.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, 39-51-3201, 39-51-3202, 39-51-3206, MCA

REASON: The proposed new rule is necessary because it adopts by reference the updated procedures for interstate recovery of benefit overpayments. The new rule replaces ARM 24.11.1221, 24.11.1225, 24.11.1228, and 24.11.1229, which were based on NASWA's 1987 Interstate Reciprocal Overpayment Recovery Arrangement. Because the procedures are adopted by reference, it is duplicative to repeat those procedures in these rules.

J. Proposed Subchapter 14: Employer Accounts

24.11.2005 (24.40.XXX) ESTABLISHING AN EMPLOYER'S UNEMPLOYMENT INSURANCE ACCOUNT (1) Every employer required to pay unemployment insurance tax must register for an employer account number on a form provided by the department. A new employer who has acquired the business of another employer must not use the predecessor's identification number. ~~Application for an employer account number is to be sent to the Unemployment Insurance Division, P.O. Box 6339, Helena, Montana 59604-6339.~~

(a) An employer is liable for reporting and paying unemployment insurance tax regardless of registration.

~~(2) Failure to properly register does not relieve an employer from reporting and remitting unemployment insurance tax.~~

(2) Professional employer organizations licensed under Title 39, chapter 8, MCA, and temporary service contractors as defined in 39-71-116, MCA, must identify themselves when establishing an account.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-1101, MCA

REASON: The proposed amendment to strike a portion of (1) is necessary to account for other means of establishing an employer account. Reasonable necessity exists to adopt new (2) to permit the repeal of ARM 24.11.2011, which is therefore unnecessary.

24.11.2007 (24.40.XXX) EMPLOYER ENTITY ~~FORMS~~ TYPES (1) remains the same.

~~(2) Legal entity forms include, but are not necessarily limited to a:~~

~~(a) sole proprietorship;~~

~~(b) partnership, pursuant to the provisions of Title 35, chapter 10, MCA;~~

~~(c) limited partnership, pursuant to Title 35, chapter 12, MCA;~~

~~(d) corporation, pursuant to Title 35, chapters 1 through 4 and chapter 9, MCA;~~

~~(e) member-managed limited liability company, pursuant to Title 35, chapter 8, MCA;~~

~~(f) manager-managed limited liability company, pursuant to Title 35, chapter 8, MCA;~~

~~(g) member-managed limited liability partnership, pursuant to Title 35, chapter 10, MCA;~~

~~(h) manager-managed limited liability partnership, pursuant to Title 35, chapter 10, MCA; and~~

~~(i) governmental unit.~~

~~(3)~~ (2) An employer that attempts to form or operate as an entity other than a sole proprietorship will not be treated as such until the employer complies with Montana law regarding creation and/or maintenance of that entity ~~form~~ type. ~~As an example, if two individuals intend to form a limited liability company but fail to properly do so, the individuals will be treated as partners for unemployment insurance purposes. In general, two or more individuals owning a business and functioning as an employer are deemed to be in a partnership and have joint and several liability for unpaid unemployment insurance contributions.~~

~~(4)~~ (3) An employer that changes its legal entity ~~form~~ type must promptly report to the department the date of the change and identify its new entity ~~form~~ type.

~~(5) The department may require an employer to document its legal entity form.~~

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, 39-51-603, MCA

REASON: The proposed amendment to strike (2) is necessary because it is not necessary to restate legal entity types in Montana, when such is already in statute. Necessity exists to strike portions of (3) because the rule is plain on its face, without the need for examples. Reasonable necessity exists to strike (4) because employer reports are required to the department by statute. References to employer "form" are proposed to be amended to refer to entity "type," so as to avoid confusion about a form for the collection of information versus a form of entity.

24.11.2015 (24.40.XXX) CLOSING AN EMPLOYER ACCOUNT (1) An employer that ceases all employment and reports no wages to the department for eight consecutive calendar quarters is removed from the department's record of active employers. ~~The department will notify the employer of that action.~~

(2) and (3) remain the same.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-204, 39-51-603, 39-51-1101, 39-51-1102, 39-51-1103, MCA

REASON: The proposed amendment to strike (1) is necessary because it sets forth a business process which need not be in rule.

K. Proposed Subchapter 15: Employer Charges and Tax Rates

24.11.613 (24.40.XXX) CHARGING BENEFIT PAYMENTS TO EXPERIENCE-RATED EMPLOYERS–CHARGEABLE EMPLOYERS ~~(1) Benefit payments are charged to each employer who paid wages to the claimant during the base period. The charge will be based on the percentage of wages the employer paid to the claimant during the base period. For example, if the claimant earned 10 percent of the base period wages working for an employer, that employer would be chargeable for 10 percent of the benefits drawn by the claimant.~~

(a) remains the same but is renumbered (1).

~~(b) The department's determination concerning a separation of employment from a base period employer, which subjects the claimant to possible disqualification under provisions of 39-51-2302, 39-51-2303, or 39-51-2305, MCA, will determine if that employer's account will be charged.~~

(2) ~~An employer has not reduced hours or wages as used in 39-51-1214, MCA, if continued work was available for the same number of hours prior to the date the initial claim was filed as at the time of most recent hire. If the claimant was hired on a part-time basis with no guaranteed hours, no reduction has occurred unless the wages paid or the hours available in the four week period following the filing date of the claim are at least 10 percent less than the wages paid or hours available in the four-week period prior to the filing date of the claim. A reduction for salaried employees is based on a reduction in salary only, not on a reduction in hours.~~ A claimant does not have reduced hours or wages if:

(a) hours of available work at the time of initial claim and at the date of hire are the same;

(b) the claimant was employed part time and there is not at least a 10 percent reduction in wages or hours in the four week period following the date of claim.

~~(3) When the first benefit check is issued, the department mails a "Potential Charge Notice" to the chargeable employer. This notice tells the employer that the benefits paid to the claimant will be charged to the employer's account unless the employer shows that the claimant was fired for misconduct or quit without good cause attributable to employment, pursuant to 39-51-2302 and 39-51-2303, MCA. The explanation of the separation must contain specific details of the separation, including copies of any supporting documents.~~

~~(a) As provided in 39-51-1214, MCA, the department reviews the information submitted by the employer and issues a determination notice stating whether the employer should be charged for the claimant's benefits.~~

~~(b) An employer has eight calendar days from the date of the notice to respond to the "Potential Charge Notice" and/or "Claim Filing and Potential Charge Notice." If an employer fails to show good cause for delay in responding to either notice, the employer forfeits the right to appeal the department's determination and waives the right to credit for any benefit overpayment that may result, in accordance with ARM 24.11.208.~~

~~(c) If the employer provides the department with information that justifies relief of charges, but the employer failed to provide separation information within the time limits of the notice, the department may not relieve the charges to the employer's experience-rated account.~~

~~(d) The employer may appeal the department's decision within ten days of mailing the determination as provided in 39-51-2402, MCA.~~

~~(4) Within 60 days of the end of each calendar quarter, the department mails to the employer a statement of benefits charged to the employer's account. This statement is the "Quarterly Statement of Benefits Paid" and is for informational purposes only since any appeal must be made from the "Potential Charge Notice" and shows:~~

~~(a) the claimant's name and social security number;~~

~~(b) the date on which the charges were effective; and~~

~~(c) the amount of benefits charged to the employer's account.~~

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-1214, MCA

REASON: The proposed amendments to strike (1) and (1)(b) are necessary because they duplicate 39-51-1214, MCA. Amendment to (2) simplifies the rule. Striking reference to salaried employees is necessary because a salaried employee, by definition, does not have a required number of hours worked. As such, hours reduction could not be considered. Reasonable necessity exists to strike (3) because it sets forth a standard determination appeal rule, which is stated in other rules. Reasonable necessity exists to strike (4) because it sets forth a business process, which need not appear in rule.

24.11.2201 (24.40.XXX) EXPERIENCE-RATED EMPLOYERS ~~(1) An experience-rated employer is a private employer whose contribution rate is based on the experience rating record of each business operated by the employer and the rate classification assigned to the employer under the contribution rate schedule.~~

~~(2) The contribution rate for each experience-rated employer is calculated by:~~

~~(a) determining the employer's experience factor;~~

~~(b) comparing that experience factor to the experience factors of all other employers; and~~

~~(c) assigning the employer a rate classification within the contribution rate schedule.~~

~~(3) The experience factor as defined in 39-51-1213, MCA, is computed by subtracting the benefits charged to the employer's account since October 1, 1981, from the amount of contributions paid by the employer since October 1, 1981. This is the "reserve." The reserve is then divided by the average annual taxable payroll for the last three fiscal years. The resulting ratio is the experience factor, also known as the reserve ratio. The following equations show how the experience factor is calculated:~~

~~Contributions paid - Benefit charges = Reserve~~

~~Reserve / Average taxable payroll = Experience Factor~~

~~(a) Each experience-rated employer is assigned a rate classification on the contribution rate schedule depending upon the employer's experience factor.~~

~~(b) Experience-rated employers are divided into three categories: eligible, new, and deficit employers. Each category is defined in 39-51-1121, MCA.~~

~~(4)~~ (1) On or before April 1 of each year, the department ~~mails~~ sends rate notices to employers. ~~The type of notice depends upon whether the employer is:~~

~~(a) an eligible employer;~~

~~(b) a deficit employer;~~

~~(c) a new employer; or~~

~~(d) an employer with past due reports, taxes, penalties or interest.~~

~~(5)~~ (2) Eligible employers and deficit employers who do not have delinquent accounts are sent a rate notice with the ~~following~~ information~~:~~ used to calculate the applicable contribution rate.

~~(a) employer's taxable wages from the three fiscal years immediately preceding the computation date;~~

~~(b) amount of all contributions paid from October 1, 1981, through the computation date;~~

~~(c) amount of benefits charged to the account since October 1, 1981, through the computation date;~~

~~(d) average taxable wages for the last three fiscal years;~~

~~(e) employer's reserve and reserve ratio;~~

~~(f) tax rates for the current year; and~~

~~(g) taxable wage base for the current year.~~

~~(6)~~ (3) New employers who do not have delinquent accounts are sent a rate notice with the ~~following information:~~

~~(a)~~ tax rates for the current year~~; and~~.

~~(b) taxable wage base for the current year.~~

~~(7)~~ (4) If all past due reports, taxes, penalties and interest are satisfied within 30 days of the ~~date of mailing~~ sending of the rate notice, the employer's deficit, eligible, or new computed contribution rate is reinstated. The department will send~~s~~ the employer a revised contribution rate notice.

~~(8) The rate notice is final unless the employer files a written request for a redetermination within 30 days of mailing the rate notice. The request for redetermination must explain why the employer believes the assigned contribution rate is incorrect.~~

~~(9) If, after redetermination, the employer still contests the contribution rate, the employer may appeal the department's decision under 39-51-2402, MCA.~~

~~(10) Beginning in the first quarter of 2008, an assessment in the amount of .13 or .18 percent of taxable wages, as provided by 39-51-404, MCA, must be paid by all experience-rated employers and deposited in the employment security account provided for in 39-51-409, MCA. The assessment amount is not considered as "contributions" for the purposes of 39-51-401, MCA, and for purposes of reporting on form 940 Employer's Annual Federal Unemployment (FUTA) Tax Return.~~

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-301, 39-51-404, 39-51-1103, 39-51-1121, 39-51-1123, 39-51-1213, MCA

REASON: The proposed amendments to strike provisions in this rule are necessary because they duplicate statute. Changes are proposed to (4) and (7) to provide for alternative means of notice aside from regular mail.

NEW RULE XL (24.40.XXX) EMPLOYER REPORTING - SICK LEAVE OR ACCIDENT DISABILITY PAYMENTS AS WAGES (1) If the employer paid the premium for sick leave or accident disability insurance, any payments made to an employee under that insurance coverage are reportable as wages by the employer. The payments are reportable as wages for six months after the last calendar month in which the employee worked for such employer.

(2) The insurance company, or other third party, that made sick leave or accident disability payments to the employee assumes responsibility for reporting the wages to the department if the third party fails to give the following information to the employer within 15 days of the end of the calendar quarter in which the sick leave or accident disability payments were made to the employee:

(a) name and social security number of the employee who received the payments; and

(b) total amount of the payments.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, 39-51-1103, MCA

REASON: The proposed new rule is necessary because it contains ARM 24.11.2501(2), repealed below, and the substance of this section is more logically located with employer tax rules rather than wage rules.

24.11.2204 (24.40.XXX) RATES FOR NEW EMPLOYERS (1) remains the same.

(2) A professional employer organization (PEO) licensed under Title 39, chapter 8, MCA, for the first calendar year of subjectivity is assigned the nonclassifiable rate for new employers. Thereafter, unless the PEO is experience-rated, the PEO is assigned a rate as a new employer in the industry in which the majority of ~~workers~~ employees are placed for the PEO's clients.

(a) The PEO must provide the department with the quarterly report and a list of ~~workers~~ employees showing which ~~workers~~ employees were assigned to which client. If the list is not provided, the PEO will be assigned the nonclassifiable rate for new employers for the following year.

(3) through (5) remain the same.

AUTH: 39-8-201, 39-51-302, MCA
IMP: 39-8-207, 39-51-1101, MCA

REASON: The proposed amendments to (2) and (2)(a) are necessary to specify that unemployment laws apply to employees, not the more general term "workers."

24.11.2205 (24.40.XXX) EXPERIENCE-RATING RECORD TRANSFER

~~(1) When a new business entity is formed and it acquires assets, employees, business, organization, or trade from another employer, the new business entity is classified as a successor employer. The procedures for transferring an employer's experience-rating record are described in 39-51-1219, MCA. For purposes of this rule, predecessor employer and successor employer are used in the same manner and have the same meaning as those terms have in 39-51-1219, MCA.~~

~~(2) Except as otherwise provided in this rule, an application for transferring the experience-rating record is automatically sent to the successor employer if, within 90 days of the change of ownership, the department discovers that an account involves a predecessor employer.~~

~~(3) An experience-rating record is automatically transferred from the predecessor employer to the successor employer if both employers are under substantially common ownership, management, or control. An experience-rating record includes the amount of contributions paid, benefits charged, and taxable wages reported.~~

(3)(a) through (3)(a)(viii) remain the same but are renumbered (1) through (1)(h).

(4) remains the same but is renumbered (2).

~~(5) In the case of partial transfer of the trade or business of an employing entity (referred to as the predecessor employer) to another entity (referred to as the successor), the portion of the experience-rating record transferred from the predecessor employer to the successor must be determined in the same ratio as:~~

~~(a) the portion of the payroll transferred to the successor in the current and the previous four calendar quarters immediately preceding the date of transfer; to~~

~~(b) the total payroll of the predecessor employer would have had during that same period, had the transfer not occurred.~~

(6) and (7) remain the same but are renumbered (3) and (4).

AUTH: 39-8-201, 39-51-301, 39-51-302, MCA
IMP: 39-8-201, 39-51-1219, MCA

REASON: The proposed amendments are necessary because (1) duplicates statute, (2) sets forth a business process which need not be stated in rule, and (3) and (5) duplicate statute.

24.11.2208 (24.40.XXX) REACTIVATED EMPLOYER RATES (1) The department shall reactivate the unemployment insurance account of an employer who begins employing ~~workers~~ employees within five years from the last date of employment. The department shall assign the employer a contributions rate by taking into account the employer's prior experience rated record.

(a) and (b) remain the same.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-1121, 39-51-1206, 39-51-1216, MCA

REASON: The proposed amendment to (1) is necessary to specify that unemployment laws apply to employees, not the more general term "workers."

24.11.2221 (24.40.XXX) STATE AND LOCAL GOVERNMENT EXPERIENCE RATING (1) through (4) remain the same.

AUTH: 39-51-302, MCA
IMP: 39-51-404, 39-51-1212, MCA

REASON: The proposed transfer of this rule is necessary because the department proposes transferring the entirety of the UI program's rules from ARM Title 24, chapter 11 to a new subchapter in ARM Title 24, chapter 40, to aid in organization and clarity of the rules.

L. Proposed Subchapter 16: Employer Records, Reporting, and Payments

24.11.2701 (24.40.XXX) POSTING NOTICE TO ~~WORKERS~~ EMPLOYEES

(1) Every employer must post and maintain a printed notice provided by the department showing that the employer is subject to Montana unemployment insurance law and has been registered by the department. This notice must be posted in a conspicuous place~~s~~ near the locations where services are performed. If employees do not work in a central location, the employer shall annually disseminate

the notice to all affected employees by mail or electronic means consistent with typical business practices for disseminating information to employees.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-1101, MCA

REASON: Notice of coverage by employers remains required by federal law. *See* 20 CFR Part 602, Appendix A, Section 6014. However, Montana's notice rule reasonably requires updating to reflect modern workforce trends, including remote employment. The rule is proposed to be broadened to permit multiple notice types, depending on employer worksite and employee work location.

24.11.2704 (24.40.XXX) RECORDS TO BE KEPT BY EMPLOYER

(1) remains the same.

(2) For each pay period, those records must show:

(a) remains the same.

(b) the total wages~~, as defined in 39-51-201, MCA,~~ for employment in such pay period; and

(c) through (3)(c)(iv) remain the same.

(d) the date(s) the employee was hired, rehired, or returned to ~~work~~ employment after a temporary layoff;

(e) through (h) remain the same.

(4) Employers must keep evidence of business ownership including, but not limited to, limited liability company and partnership agreements, share certificates, and documents issued or acknowledgments by the Secretary of State.

(5) remains the same.

~~(6) The records and reports are open to periodic review by the department's authorized representatives.~~

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-603, MCA

REASON: The rule is proposed to be amended to exclude an unnecessary statutory cross reference and to remove a statement of inherent departmental authority which is duplicative of statute. Section (4) is amended to specify additional documents used to prove business ownership.

24.11.2707 (24.40.XXX) REPORTING OF WAGES IN EXCESS OF TAXABLE WAGE BASE FOR CERTAIN EMPLOYERS (1) remains the same.

~~(2) All wages paid to an employee by an employer are reportable as total wages. Wages paid to an employee in any single calendar year by an employer, up to and including the annual taxable wage base as defined in 39-51-1108, MCA, for that calendar year, are taxable wages. All further wages paid to the employee by that employer in that calendar year are "excess wages" and not taxable.~~

(3) remains the same but is renumbered (2).

~~(4) Prior to January 1, 2014, wages reported for an employee to another state may be used in calculating the employee's taxable wage in Montana.~~

(~~5~~) (3) ~~Beginning January 1, 2014, only~~ Only wages reported to the Montana unemployment insurance program may be used to calculate an employee's taxable wage in Montana.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-203, 39-51-1108, 39-51-1217, MCA

REASON: The proposed amendment to strike (2) is necessary because it is duplicative of statute. The proposed amendment to strike (4) is necessary because the time period is no longer applicable.

24.11.2711 (24.40.XXX) DUE DATE OF TAXES AND QUARTERLY REPORTS BY EMPLOYERS (1) through (6) remain the same.

(7) ~~An employer or its agent must report wage information in a format prescribed by the department.~~ All employers and third-party agents must report quarterly wage information in an electronic format approved by the department.

~~(a) An employer who reported wages for 20 or more employees in any quarter in the preceding calendar year and a third-party agent who reports on behalf of an employer must use an electronic format provided or approved by the department to file quarterly wage reports. Once an employer crosses the 20 or more employee threshold, all subsequent wage reporting must be electronic.~~

~~(b) An employer reporting 19 or fewer employees may file quarterly wage reports using a UI-5 form provided or approved by the department or by an electronic format provided or approved by the department.~~

~~(c)~~ The department may deem quarterly wage reports filed by paper or in any other format not approved by the department as untimely and subject the employer to a late filing penalty, pursuant to 39-51-1301, MCA.

(8) remains the same.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-603, MCA

REASON: There is reasonable necessity to amend this rule to require the use of electronic means to file quarterly employer reports, regardless of employer size. This change recognizes departmental needs to receive and process reports efficiently as well as that current business processes in the private sector should permit this change to be made. The department will continue to receive payments by various means.

24.11.2715 (24.40.XXX) DUE DATE AND APPLICATION OF TAXES
(1) and (2) remain the same.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-1103, 39-51-1110, MCA

REASON: The proposed transfer of this rule is necessary because the department proposes transferring the entirety of UI program's rules from ARM Title 24, chapter

11 to a new subchapter in ARM Title 24, chapter 40, to aid in organization and clarity of the rules.

5. The rules proposed to be repealed are as follows:

24.11.101 DIVISION ORGANIZATION – LOCATION

AUTH: 2-4-201, 39-51-302, MCA
IMP: 2-4-201, 39-51-301, MCA

REASON: The proposed repeal of this rule is necessary because it is not necessary, nor is it an efficient means to convey the contact information of the unemployment insurance division to the public.

24.11.201 ADOPTION OF MODEL RULES

AUTH: 39-51-301, 39-51-302, MCA
IMP: 2-4-204, 39-51-301, MCA

REASON: The proposed repeal of this rule is necessary because the department adopted the Attorney General's model rules in ARM 24.2.101, meaning the UI program is already subject to the model rules. The hearing procedures for the UI program are also contained in the new proposed Title 24, chapter 40, subchapter 2.

24.11.203 DETERMINATION OF EMPLOYMENT STATUS REGARDING INDEPENDENT CONTRACTORS

AUTH: 39-51-302, MCA
IMP: 39-51-201, 39-51-204, MCA

REASON: The proposed repeal of this rule is necessary because this rule is duplicative of ARM 24.11.2407 (24.40.XXX) EMPLOYEE STATUS - DETERMINATION OF INDEPENDENT CONTRACTORS – DEPARTMENT PROCEDURES. As a result of this duplication, confusion may arise.

24.11.206 TIME ALLOWED AND PROCEDURE FOR FILINGS AND SUBMISSIONS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-301, 39-51-603, 39-51-605, Title 39, chapter 51, parts 11 through 13, and 21 through 24, MCA

REASON: The proposed repeal of this rule is necessary because this rule is replaced in entirety by NEW RULE I.

24.11.207 INTERESTED PARTY

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-605, Title 39, chapter 51, parts 11 and 12, 21 through 24, and 32, MCA

REASON: The proposed repeal of this rule is necessary because this rule is replaced in entirety by NEW RULE II.

24.11.208 EMPLOYER LOSS OF INTERESTED PARTY STATUS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-605, MCA

REASON: The proposed repeal of this rule is necessary because this rule is replaced in entirety by NEW RULE III.

24.11.210 CLAIMANT AGENT DESIGNATION

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-3201, MCA

REASON: The proposed repeal of this rule is necessary because this rule is replaced in entirety by NEW RULE XXVIII.

24.11.315 APPEAL OF DEPARTMENT DETERMINATIONS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 2-4-201, 39-51-1109, 39-51-2402, 39-51-2407, MCA

REASON: The proposed repeal of this rule is necessary because the substance of (2) through (4) is contained in NEW RULE IV. Section (1) is repealed in its entirety because it is duplicative of 39-51-2402, MCA.

24.11.316 TRANSFER OF FILES TO OFFICE OF ADMINISTRATIVE HEARINGS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-1109, 39-51-2403, 39-51-2407, MCA

REASON: The proposed repeal of this rule is necessary because it purely sets forth a business operation for which no administrative rule is necessary. Certainly, after an appeal is received, the department will continue to transfer files for a case hearing. However, a rule to specify such transfer is not needed.

24.11.318 TELEPHONE HEARINGS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-1109, 39-51-2403, 39-51-2407, MCA

REASON: The proposed repeal of this rule is necessary because rule conflicts with statute to the extent it does not specify that hearings may be held via video conference. *See* 39-51-2407(2), MCA. In person hearings are exceptionally rarely requested. To the extent an individual requests an in person hearing as a reasonable accommodation for a disability or other good-cause reason, the hearing officer has sufficient inherent authority to consider and grant the decision as deemed in the best interest of the hearing. The provisions regarding tax hearing evidence and contact information are duplicative of ARM 24.11.325.

24.11.319 DISQUALIFICATION

AUTH: 39-51-302, MCA
IMP: 39-51-1109, 39-51-2403, 39-51-2407, MCA

REASON: There is reasonable necessity to repeal this rule because it is within the inherent authority of the hearing officer to recognize a need for disqualification and to consider motions for the same. The rule is not necessary.

24.11.320 HEARING PROCEDURE—BENEFIT DETERMINATIONS

AUTH: 39-51-302, MCA
IMP: 39-51-2407, MCA

REASON: The proposed repeal of this rule is necessary in favor of a simpler, shorter rule NEW RULE V, which vests authority to govern hearing proceedings with the appeals referee. Timelines for holding the hearing are proposed to be included in ARM 24.11.317 (24.40.XXX) BENEFITS HEARINGS NOTICE--TIMING.

24.11.325 PREHEARING CONFERENCE FOR TAX HEARINGS

AUTH: 39-51-302, MCA
IMP: 39-51-1109, 39-51-2403, MCA

REASON: The proposed repeal of this rule is necessary because the substance of the rule is transferred to a new, simpler rule NEW RULE VI.

24.11.326 DISCOVERY IN TAX HEARINGS

AUTH: 39-51-302, MCA
IMP: 39-51-1109, 39-51-2403, MCA

REASON: The proposed repeal of this rule is necessary because the appeals referee is authorized to determine the necessity and means of discovery pursuant to NEW RULE VI and the guiding principles of the Montana Rules of Civil Procedure are adopted by NEW RULE V.

24.11.327 MOTIONS IN TAX HEARINGS

AUTH: 39-51-302, MCA
IMP: 39-51-1109, 39-51-2403, MCA

REASON: The proposed repeal of this rule is necessary because the timing and scheduling of motions is within the discretion of the appeals referee pursuant to NEW RULE XV, and scheduling of motions is determined in the scheduling conference, pursuant to NEW RULE VI.

24.11.328 HEARING PROCEDURES--TAX DETERMINATIONS

AUTH: 39-51-302, MCA
IMP: 39-51-1109, 39-51-2403, MCA

REASON: The proposed repeal of this rule is necessary because the burden of proof in (1) is transferred to NEW RULE VI. The remaining substance of (1) through (4) is transferred to a simpler shorter rule NEW RULE V.

24.11.329 FAILURE TO APPEAR AT A TAX HEARING

AUTH: 39-51-302, MCA
IMP: 39-51-1109, 39-51-2403, MCA

REASON: The proposed repeal of this rule is necessary because the means of the hearing rest within the discretion of the appeals referee. To the extent that a matter is dismissed, the means of appeal is determined by 39-51-2403, MCA, and need not be restated in rule.

24.11.331 FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND ORDER

AUTH: 39-51-302, MCA
IMP: 39-51-1109, 39-51-2403, MCA

REASON: The proposed repeal of this rule is necessary because it is duplicative of 39-51-2403, MCA.

24.11.336 WITNESS FEES

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2407, MCA

REASON: The proposed repeal of this rule is necessary because its substantive provisions are proposed to be incorporated into 24.11.335 (24.40.XXX) SUBPOENAS.

24.11.337 APPEALS DECISIONS TO BE FILED

AUTH: 39-51-301, 39-51-302, MCA
IMP: 2-4-302, 39-51-2407, MCA

REASON: The proposed repeal of this rule is necessary because it is duplicative of ARM 1.3.233 of the Attorney General's Model Rules, which has been adopted by the department in ARM 24.2.101.

24.11.441 CLAIMS FOR BENEFITS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2101, 39-51-2102, 39-51-2103, 39-51-2104, 39-51-2105, 39-51-2106, 39-51-2107, 39-51-2108, 39-51-2109, 39-51-2110, 39-51-2201, 39-51-2202, 39-51-2203, 39-51-2204, 39-51-2205, 39-51-2207, 39-51-2208, 39-51-2301, 39-51-2302, 39-51-2303, 39-51-2304, 39-51-2305, 39-51-2306, 39-51-2307, 39-51-2401, 39-51-2402, 39-51-2403, 39-51-2404, 39-51-2405, 39-51-2406, 39-51-2407, 39-51-2408, 39-51-2409, 39-51-2410, MCA

REASON: The proposed repeal of this rule is necessary because this rule references outdated technology, and the sections are divided among new rules as follows: sections (1) and (2) are transferred in NEW RULE XVI. Sections (4) through (6) are transferred to NEW RULE XVII. Section (3) is repealed because it is unnecessary to provide a separate definition for when a claimant has established only monetary eligibility for a claim. The circumstances for initial monetary edibility for a claim are detailed in NEW RULE XIX.

24.11.442 INITIAL MONETARY DETERMINATION--WAGES—REVISIONS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2105, 39-51-2201, 39-51-2202, 39-51-2203, 39-51-2204, MCA

REASON: The proposed repeal is necessary because (1), (2), (4), (7), and (8), of this rule are transferred to NEW RULE XIX. Sections (1)(a), (5), and (6) are transferred to NEW RULE XX. Section (3) is repealed in full because the department has determined it is more efficient to consistently credit wages to the quarters in which they were paid, rather than the quarters in which they were earned. Over the last five years, less than 50 claimants benefitted from being able to assign wages to quarters based on when wages were earned rather than paid. Furthermore, the department allows claimants to use an alternate base period based on when wages are paid to help a claimant qualify for benefits if the claimant is otherwise qualified. More claimants benefit from the use of the alternate base period to qualify for wages than ever benefitted from crediting wages as earned.

24.11.443 WEEKLY PAYMENT REQUESTS

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-201, Title 39, chapter 51, parts 21 through 23, MCA

REASON: The proposed repeal is necessary because this rule is replaced by NEW RULE XXI.

24.11.445 INACTIVE CLAIMS--REACTIVATING A CLAIM

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2103, 39-51-2104, 39-51-2401, MCA

REASON: The proposed repeal is necessary because this rule is replaced by NEW RULE XXVI.

24.11.450A NONMONETARY DETERMINATIONS AND REDETERMINATIONS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-605, 39-51-2202, 39-51-2203, 39-51-2205, 39-51-2301, 39-51-2302, 39-51-2303, 39-51-2304, 39-51-2402, 39-51-2507, 39-51-2508, 39-51-2511, 39-51-2602, 39-51-3201, 39-51-3202, 39-51-3206, MCA

REASON: The proposed repeal is necessary because sections (1)-(7) are transferred to NEW RULE XXIII. Section (9) is repealed because the department determined that requiring all claimants to request a redetermination on every issue of benefit eligibility is not required by 39-51-2402, MCA, and the process rarely results in a change of the original determination, and removing the mandatory request for a redetermination will increase the efficiency of claim administration for all interested parties.
Sections (10) and (11) are repealed because the rules for requesting an appeal are transferred and consolidated into a new proposed subchapter, Subchapter 2: OAH Procedure.
A request for redetermination is now limited to the situations of restored eligibility and benefit requalification, which was previously Sections (8) and (12), now transferred to NEW RULE XXV.

24.11.452A ELIGIBILITY FOR BENEFITS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, 39-51-2101, 39-51-2104, 39-51-2115, 39-51-2304, MCA

REASON: The proposed repeal is necessary because sections (1) through (5) are duplicative of statutes 39-51-2101, 39-51-2104, 39-51-2115, and 39-51-2304, MCA; section (6) is transferred to NEW RULE XXVII; sections (5)(c)(iv) and (7) are transferred to NEW RULE XXVIII; and section (8) is transferred to NEW RULE XV.

24.11.453A WORK SEARCH CONTACTS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2104, 39-41-2115, 39-51-2304, MCA

REASON: The proposed repeal is necessary because this rule is replaced by NEW RULE XXII. The new rule removes language that is duplicative of ARM 24.11.475, and it removes references to repealed rules ARM 24.11.470 and ARM 24.11.471. Section (7) is repealed because it is duplicative of Subchapter 10 Benefit Overpayments.

24.11.454A LEAVING OR DISCHARGE FROM WORK

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2302, 39-51-2303, MCA

REASON: The proposed repeal is necessary because this rule is replaced by NEW RULES X through XXIII. Section (1) is transferred to NEW RULE X; section (2) is transferred to NEW RULE XI; section (3) is transferred to NEW RULE XII; and section (4) is transferred to NEW RULE XIII. Subsections (1)(a)(i) through (iv) regarding benefits of limited duration are repealed because this benefit is not required by state or federal law and only a small percentage of claimants qualify for benefits of limited duration. Of those claimants who qualify, most only receive one additional week of benefits. Most claimants give an employer two weeks' notice of leaving employment; therefore, of the claimants who qualify for benefits of limited duration, they only receive one additional week of benefits after observing the required waiting week.

24.11.455 REFUSAL OF WORK

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2304, MCA

REASON: The proposed repeal of this rule is necessary because it is duplicative of 39-51-2304, MCA.

24.11.456 VOLUNTARY LAYOFF

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2101, 39-51-2104, 39-51-2303, 39-51-2304, MCA

REASON: The proposed repeal is necessary because this rule is replaced by NEW RULE XIII.

24.11.459 ADMINISTRATIVE PENALTY

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-3201, MCA

REASON: The proposed repeal is necessary because (1) through (3) are transferred to NEW RULE XXXIII, and (4) and (5) are transferred to NEW RULE XXXIV.

24.11.464 BENEFITS BASED ON SERVICES IN EDUCATIONAL INSTITUTIONS AND EDUCATIONAL SERVICE AGENCIES

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2108, MCA

REASON: The proposed repeal is necessary because this rule is repealed and largely replaced by NEW RULE XXIX. Subsection (1)(c)(ii) regarding vacation or holiday breaks is repealed because it is duplicative of 39-51-2108(3), MCA. Subsection (1)(d) is repealed because "same capacity" is self-explanatory.

24.11.465A DISQUALIFICATION WHEN UNEMPLOYMENT DUE TO STRIKE

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2305, MCA

REASON: The proposed repeal is necessary because this rule is replaced in entirety by NEW RULE XXX.

24.11.470 QUALITY CONTROL

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-301, MCA

REASON: The proposed repeal of this rules is necessary because it is unnecessary and provides no specific guidance for the department's quality control program.

24.11.471 REEMPLOYMENT ELIGIBILITY PROGRAMS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2104, 39-51-2304, MCA

REASON: The proposed repeal is necessary because this rule it is duplicative of 39-51-2104, MCA.

24.11.476 ADDITIONAL TRAINING BENEFITS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2116, MCA

REASON: The proposed repeal of this rule is necessary because it is largely duplicative of ARM 24.11.475. The sections of this rule that specifically address additional training benefits are amended into ARM 24.11.475.

24.11.481 DEFINITION OF SUITABLE WORK FOR EXTENDED BENEFITS PURPOSES--CLASSIFICATION AND DETERMINATION OF JOB PROSPECTS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2508, MCA

REASON: The proposed repeal is necessary because this rule is replaced by NEW RULE XXXII.

24.11.485 SUITABLE WORK

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2101, 39-51-2112, 39-51-2115, 39-51-2304, MCA

REASON: The proposed repeal is because necessary this rule is duplicative of 39-51-2304, MCA. Sections (4) and (5) are transferred to NEW RULE XXXI.

24.11.487 HOURS TYPICALLY WORKED

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2101, 39-51-2115, MCA

REASON: The proposed repeal is necessary because this rule is duplicative of 39-51-2101 and 39-51-2115, MCA.

24.11.490 LEAVE OF ABSENCE

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2112, MCA

REASON: The proposed repeal is necessary because this rule is duplicative of 39-51-2112, MCA.

24.11.491 SUSPENSION

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2101, 39-51-2113, 39-51-2202, 39-51-2402, MCA

REASON: The proposed repeal is necessary because this rule is duplicative of 39-51-2113, MCA.

24.11.511 SCOPE AND PURPOSE--MODEL LANGUAGE

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, MCA

24.11.515 NOTIFICATION OF INTERSTATE CLAIM

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, MCA

24.11.516 REGISTRATION FOR WORK

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, MCA

24.11.517 BENEFIT RIGHTS OF INTERSTATE CLAIMANT

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, MCA

24.11.518 CLAIMS FOR BENEFITS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, MCA

24.11.521 PROVIDING ASSISTANCE TO INTERSTATE CLAIMANTS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, MCA

24.11.523 ELIGIBILITY REVIEW PROGRAM

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, MCA

24.11.525 DETERMINATION OF CLAIMS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, MCA

24.11.531 APPELLATE PROCEDURE

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, MCA

24.11.534 EXTENSION OF INTERSTATE BENEFIT PAYMENT PLAN TO INCLUDE CLAIMS TAKEN IN AND FOR CANADA

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-504, MCA

REASON: The proposed repeal of ARM 24.11.511, 24.11.515, 24.11.516, 24.11.517, 24.11.518, 24.11.521, 24.11.523, 24.11.525, 24.11.531, and 24.11.534 is necessary because the procedures contained in those rules are now adopted by reference in NEW RULE XXXVIII. The information for interstate claims process is readily available online and maintained by NASWA.

24.11.616 BENEFIT OVERPAYMENTS–CREDITING EMPLOYER ACCOUNTS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-605, 39-51-1110, MCA

REASON: The proposed repeal of this rule is necessary because it restates statutory requirements in 39-51-605 and 39-51-1110, MCA.

24.11.617 RELIEF OF CHARGES TO EMPLOYERS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-1214, 39-51-2111, 39-51-2116, 39-51-2302, 39-51-2303, MCA

REASON: The proposed repeal of this rule is necessary because it duplicates the requirements of 39-51-1214, MCA.

24.11.911 REQUESTS FOR INFORMATION

AUTH: 39-51-302, 39-51-603, MCA
IMP: 39-51-301, 39-51-303, 39-51-603, MCA

REASON: There is reasonable necessity to repeal this rule because it is unnecessary to publish in rule what may be more simply and easily conveyed by other means. The department takes care to ensure that its records are open to the public as required by the Montana Constitution. Record requests are fulfilled to the extent feasible no matter the means by which they are conveyed by a requester or received by the department. As a result, the rule is not necessary. Further, to the extent specificity with regard to requesting unemployment insurance information is required, those details are set forth in ARM 24.11.915.

24.11.1205 BENEFIT OVERPAYMENTS–NOTICES AND APPEAL RIGHTS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-3206, MCA

REASON: The proposed repeal of this rule is necessary because this rule is replaced in its entirety by NEW RULE XXXV.

24.11.1207 WAIVER OF RECOVERY OF BENEFIT OVERPAYMENTS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-3206, MCA

REASON: The proposed repeal of this rule is necessary because the rule is replaced by shorter, cleaner rules. Section (1) is repealed because the department has discretion to request proof of a claimant's assets and expenses under (2) of NEW RULE XXXVII. Sections (2), (3), (4), (6), and (8) are transferred to NEW RULE XXXVI, and (5) and (7) are transferred to NEW RULE XXXVII.

24.11.1209 FRAUDULENT BENEFIT OVERPAYMENTS–ADMINISTRATIVE PENALTIES

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-3201, 39-51-3202, 39-51-3203, 39-51-3206, MCA

REASON: The proposed repeal is necessary because this rule is duplicative of 39-51-3201, MCA.

24.11.1213 OFFER IN COMPROMISE

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-3206, MCA

REASON: The proposed repeal is necessary because the requirement that an offer to pay back an overpayment debt must be over 50% of the amount due is duplicative of 39-51-3206, MCA, and the remaining substance of the rule sets contract terms that are within the discretion of the department. Specifying the contract terms in rule precludes the department from having flexibility to adjust an individual contract for repayment to the needs of an individual claimant. The department proposes repealing the rule in favor of drafting standard repayment contracts that meet the requirements of statute and can also be modified as needed.

24.11.1221 SCOPE AND PURPOSE--MODEL LANGUAGE

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, 39-51-3201, 39-51-3202, 39-51-3206, MCA

REASON: The proposed repeal of ARM 24.11.1221, 24.11.1225, 24.11.1228, and 24.11.1229 is necessary because the rules are based on the 1987 Interstate Reciprocal Overpayment Recovery Arrangement, which is no longer in force, and the rules are replaced by NEW RULE XXXIX. The new rule adopts the updated 2013 procedure for interstate recovery of benefit overpayments by reference, and including the procedures in these rules is duplicative.

24.11.1225 RECOVERY OF STATE OR FEDERAL BENEFIT OVERPAYMENTS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, 39-51-3201, 39-51-3202, 39-51-3206, MCA

24.11.1228 COMBINED WAGE CLAIMS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, 39-51-3201, 39-51-3202, 39-51-3206, MCA

24.11.1229 CROSS-PROGRAM OFFSET

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, 39-51-3201, 39-51-3202, 39-51-3206, MCA

24.11.2011 SPECIAL TYPES OF EMPLOYERS REQUIRED TO PROVIDE ADDITIONAL INFORMATION WHEN REGISTERING

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-8-207, 39-51-201, 39-51-202, 39-51-302, MCA

REASON: The proposed repeal of this rule is necessary because the substance of the rule is proposed to be transferred to ARM 24.11.2005 (24.40.XXX) ESTABLISHING AN EMPLOYER'S UNEMPLOYMENT INSURANCE ACCOUNT, to simplify and shorten these rules for new employers.

24.11.2225 STATE, LOCAL GOVERNMENT, AND NONPROFIT ORGANIZATIONS ELECTING REIMBURSABLE ACCOUNT

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-1124, 39-51-1125, 39-51-1126, MCA

REASON: The rule is duplicative of the statutes it purports to implement, and is therefore proposed to be repealed.

24.11.2401 IDENTIFICATION OF EMPLOYEES

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-603, MCA

REASON: The proposed repeal of this rule is necessary because it is duplicative of requirements set forth in statute and rule, most particularly, ARM 24.11.2704 (24.40.XXX) RECORDS TO BE KEPT BY EMPLOYER.

24.11.2403 DETERMINING EMPLOYEE STATUS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-202, 39-51-203, 39-51-204, 39-51-603, MCA

REASON: The proposed repeal of this rule is necessary because it merely states the applicability of generally applicable laws—specifically the professional employer organization laws and the workers' compensation act. It further is duplicative of ARM 24.11.2407 (24.40.XXX) EMPLOYEE STATUS - DETERMINATION OF INDEPENDENT CONTRACTORS – DEPARTMENT PROCEDURES.

24.11.2411 STATUS OF CERTAIN FAMILY EMPLOYEES

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-203, 39-51-204, MCA

REASON: The proposed repeal of this rule is necessary because it is purely a restatement of 39-51-204, MCA.

24.11.2501 WAGES

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, 39-51-1103, MCA

REASON: The proposed repeal of this rule is necessary because (1)(a), (c), and (f) are duplicative of 39-51-201(25), MCA. Subsections (1)(b), (g), (h), and (i) are transferred to NEW RULE VII. Subsections (1)(d) and (e) are transferred to NEW RULE VIII. Section (2) is transferred to NEW RULE XL. Section (3) is repealed because the name to whom wages are designated may be material to an issue addressed pursuant to this chapter.

24.11.2511 PAYMENTS THAT ARE NOT WAGES--EMPLOYEE EXPENSES

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, 39-51-1103, MCA

REASON: The proposed repeal of this rule is necessary because the substance of the rule is transferred to NEW RULE IX.

24.11.2515 PAYMENTS THAT ARE NOT WAGES--JUROR FEES, INSURANCE PREMIUMS, ANNUITIES, DIRECTOR AND PARTNERSHIP FEES

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, 39-51-1103, MCA

REASON: The proposed repeal of this rule is necessary because (1), (4), and (6) are transferred to NEW RULE IX. Sections (2), (3), and (5) are repealed because they are duplicative of 39-51-201(25), MCA.

24.11.2801 RELEASING PROPERTY SUBJECT TO DEPARTMENT LIEN

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-1304, MCA

REASON: The proposed repeal of this rule is necessary because it is duplicative of statutory authority vested in the department at Title 39, chapter 51, part 13, MCA.

6. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728; Helena, Montana 59624. Comments must be received no later than 5:00 p.m., April 19, 2024.

7. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

8. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624, and indicating the program or programs about which they wish to receive notices.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses. However, it is expected that by simplifying, clarifying, and streamlining the rules governing unemployment insurance, small businesses will be assisted in utilizing the rules.

11. Department staff has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State March 12, 2024.

BEFORE THE STATE ELECTRICAL BOARD
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.141.301, 24.141.405, 24.141.502, 24.141.503, 24.141.504, 24.141.505, 24.141.509, 24.141.2102, and 24.141.2301, the adoption of NEW RULES I through III, and the repeal of ARM 24.141.403, 24.141.501, 24.141.507, 24.141.511, and 24.141.2401 pertaining to the state electrical board	)))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On April 16, 2024, at 8:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/82956775824
Meeting ID: 829 5677 5824, Passcode: 812244
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 829 5677 5824, Passcode: 812244

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on April 9, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.141.301 DEFINITIONS ~~(1) "Full-time employment" means employment wherein the Montana-licensed responsible electrician is available to procure, perform, administer, and supervise all electrical work being performed by the Montana-licensed electrical contractor.~~

(2) through (8) remain the same but are renumbered (1) through (7).

AUTH: 37-1-131, 37-68-201, MCA
IMP: 37-68-102, 37 68-201, 37-68-304, 37-68-305, 37-68-312, MCA

REASON: The proposed repeal of the definition for "full-time employment" is necessary because the term "full-time" commonly refers to the number of hours an employee must work per week to gain full employee benefits. For example, the term is defined in Montana Code in areas outside the board's jurisdiction: "'full-time job' means a predominantly year-round position requiring an average of at least 35 hours of work each week[,]" pursuant to the department's workforce training statutes, 39-11-103(6), MCA, and for purposes of state employee leave, "'full-time employee' means an employee who normally works 40 hours a week" under 2-18-601(8), MCA. Furthermore, the substance of the definition regarding supervision of electrical work is addressed in other rules, including ARM 24.141.505, and in the board's proposed amendments to ARM 24.141.2301.

24.141.405 FEE SCHEDULE (1) remains the same.

(2) Application fee for a license by examination (includes original license fee)	~~240~~ 190
(3) Contractor - original license fee	~~300~~ 210
(4) Renewal fee (two years)	
(a) Contractor	~~300~~ 210
(b) Master	~~200~~ 140
(c) Journeyman	~~200~~ 140
(d) Residential	~~200~~ 140
(5) Application by endorsement or reciprocity - (includes original license fee)	~~250~~ 190

(6) and (7) remain the same.

~~(8) Apprentice registration fee 10~~

(9) through (11) remain the same but are renumbered (8) through (10).

AUTH: 37-1-101, 37-1-134, 37-68-201, MCA
IMP: 37-1-134, 37-1-141, 37-1-304, 37-1-305, 37-68-304, 37-68-310, 37-68-311, 37-68-312, 37-68-313, MCA

REASON: The proposed removal of the fee to register apprentices is necessary because all apprentices are registered with the department's Montana Registered Apprenticeship program, and not with individual licensing boards. The board is proposing a 30% reduction in fees to stabilize the board's cash balance because the board's account has reached a level of unallowable excess cash. A board is not allowed to carry a balance that is more than two times the board's annual appropriation under 37-1-101(10), MCA. The board's appropriation for Fiscal Year 2023 was $413,555, and two times that appropriation is $837,110. At the current rate of fees, the board's current cash balance will exceed $837,110 starting in Fiscal Year 2024. The proposed fee reduction shall affect 5,285 current licensees and approximately 763 estimated applicants for licensure. The 30% fee reduction is estimated to reduce the board's cash balance by $285,689 over 5 years. This reduction is estimated to reduce the overall cash balance of the account to $732,005, which is below the limit of two times the board's appropriation ($837,110).

24.141.502 TEMPORARY PRACTICE PERMIT ~~(1) A temporary practice permit may be issued to an applicant upon completion of an application, submission of verification of experience, payment of the appropriate fees, and approval by the board or designated board representative. An applicant for a master electrician license may be issued a journeyman temporary practice permit.~~

(2) remains the same but is renumbered (1).

~~(3)~~ (2) A temporary practice permit issued to an applicant for an electrician license shall expire ~~60~~ 90 days from the date of issuance or upon receipt of licensure examination results. If an applicant's temporary practice permit expires before the date of the applicant's scheduled examination, the department may, on a case-by-case basis, extend an applicant's temporary practice permit.

(4) remains the same but is renumbered (3).

(4) A second temporary practice permit may be issued to a person who fails the first license examination as provided in 37-68-311, MCA.

~~(5)~~ Applicants who fail ~~an~~ a residential or journeyman-level exam with a score of ~~69~~ 64 percent or less are not eligible for a second temporary practice permit. Applicants who fail a master-level examination with a score of 69 percent or less are not eligible for a second temporary practice permit.

~~(6) Subsequent temporary practice permits may be issued at the discretion of the board.~~

AUTH: 37-1-319, 37-68-201, MCA
IMP: 37-1-305, 37-68-311, MCA

REASON: The proposed amendments to this rule are necessary to remove language that is duplicative of 37-1-305 and 37-68-311, MCA. The board also proposes extending the timeline of temporary practice permits from 60 days to 90 days to allow applicants greater flexibility in scheduling examinations. The board also proposes lowering the accepted test score for a second temporary practice permit for residential or journeyman-level licensure to be commensurate with the proposed amendments to the passing test score in ARM 24.141.503.

24.141.503 EXAMINATIONS (1) An applicant shall have one year from the date of board approval to take and pass the examination for which the application was approved. If the examination is not taken and passed within that one-year period, the applicant must submit a new application and pay the applicable fees.

~~(1)~~ (2) The examination for the residential, journeyman's, or master's license may be administered and graded by a third party. The examination passing grade for ~~all~~ residential and journeyman-level examinations is ~~75~~ 70 percent. The examination passing grade for master-level examinations is 75 percent.

~~(2)~~ (3) An applicant who fails any examination for which the application was made, may, upon the payment of the appropriate fee, take the next scheduled examination. However, if the applicant fails the exam a second time, the applicant ~~may not take the test again within a six-month period, and in addition,~~ must provide proof of having attended at least one eight-hour electrical code seminar approved by the board, since the initial failure to pass.

~~(3) In the event an applicant fails to pass any examination three or more times, the applicant must:~~

~~(a) wait at least one year from the last failed exam before taking the exam again;~~

~~(b) make reapplication to the board; and~~

~~(c) provide proof of having attended at least two eight-hour electrical code seminars approved by the board.~~

(4) An applicant who fails the master or journeyman examination two or more times may apply for and take a lower-level licensing examination ~~without obtaining the supplementary education and study hours as set forth in (2) and (3) of this rule~~.

~~(5) An applicant who fails to take an examination within 18 months from the date of the last examination that was failed will be required to submit a new application, provide written verification, and pay the applicable fees. Upon receipt of a new application, the board will require the applicant to submit the documentation required in (2) or (3) depending on the number of times the applicant has failed the examination~~.

~~(6)~~ (5) All examinations are open book. Allowed materials may have the applicant's highlights, underlining, and notes. Applicants may only use the following allowed materials during the exam:

(a) remains the same.

(b) a silent, nonprinting, nonprogrammable calculator that is not designed for preprogrammed electrical calculations (e.g., "Electrical Estimate Pal" is not allowed); ~~and~~

(c) copies of the Montana statutes and rules relating to electricians~~.~~; and

(d) "Printreading," by David L. Hittinger, based on the applicable NEC code.

~~(7)~~ (6) An applicant for an examination who, due to a ~~specific physical, mental, or sensory impairment~~ disability, requires ~~special~~ reasonable accommodation(s) in examination procedures, must submit a written request to the board office for the specific accommodation needed~~,~~ at least 15 days prior to the scheduled exam.

(7) Any applicant who takes an examination, whether the applicant passes or fails the examination, may contact the department to request their specific test score.

(8) Any applicant who takes an examination and does not pass the examination may contact the department to request a review of the examination.

(a) through (9) remain the same.

(10) Any applicant determined by the board to be cheating on an examination or using inappropriate material/equipment during an examination will fail and be required to wait at least one year before reapplying for licensure and before being allowed to reexamine. ~~All such reexaminations will be scheduled and administered by the board in Helena, Montana.~~

AUTH: 37-1-131, 37-68-201, MCA
IMP: 37-1-131, 37-68-304, 37-68-305, MCA

REASON: The proposed amendments to this rule are necessary to simplify and clarify the board's examination procedures and requirements for licensure. New (1)

regarding applications is transferred from ARM 24.141.501, repealed below. The board proposes lowering the passing examination score for residential and journeyman level licensure from 75 to 70 percent to comply with the legislature's 2019 amendments to 37-1-304, MCA, which require all licensing boards to recognize licenses granted by states with "substantially equivalent" licensing standards to this state. The board also recognizes that the majority of states that require individual licensure for journeyman electricians accept a 70 percent passing score for journeyman-level licensure. The department, on behalf of the board, has evaluated the journeyman-level licensing criteria for 32 states, and 23 of those states require a 70 percent passing score for the journeyman-level licensure exam, including 9 of the 12 states that are part of the National Electrical Reciprocal Alliance (NERA) of which Montana is a member. The proposed repeals in old (3) and (5) remove the requirements for applicants to wait a specific period of time before retaking the exam. Because applications for licensure are active with the department for one year, the amendments will allow an applicant to pass the exam and complete the licensure process before their initial application expires. The amendments to new (5) clarify what materials are allowed during the exam, and the board recognizes that many applicants highlight, underline, and write notes in their materials. New (7) is added because the board acknowledges the importance of applicants obtaining their specific exam score to assess the applicant's understanding of the material and to possibly evaluate test prep and test-taking strategies.

24.141.504 LICENSURE BY RECIPROCITY OR ENDORSEMENT (1) The board may, on a case-by-case basis, enter into a reciprocity agreement with another state or jurisdiction whose requirements are substantially equivalent or greater than the standards of this state for purposes of issuing a ~~residential or journeyman electrician~~ license.

(2) The board ~~may~~ shall issue a license by endorsement to an applicant provided that the applicant:

(a) files a completed application with the required fees; and

(b) holds a current, valid ~~and unrestricted~~ license in good standing to practice in the category applied for in another state or jurisdiction.~~;~~

~~(c) supplies a copy of the laws and rules in effect at the time of application to this state which shows that the standards in that state are equivalent to or greater than the standards in effect in this state; and~~

~~(d) provides official written verification directly from the other state(s) or jurisdiction(s) that the license has been held by the applicant for one year, that the license is active, that the license is in good standing, and that the test score received was equal to or greater than 75 percent.~~

(3) remains the same.

~~(4) The Montana electrical board does not reciprocate or endorse master electrician or electrical contractor licenses.~~

AUTH: 37-1-131, 37-68-201, MCA
IMP: 37-1-304, MCA

REASON: The proposed amendments to this rule are necessary to comply with

amendments to statute. Section 37-1-304, MCA was amended in 2019 to mandate the reciprocal licensure of those who hold valid and unrestricted licenses in other states, so long as the standards of that state are substantially equivalent to those in Montana. As presently drafted, this rule restricts license types which may be licensed by reciprocity. In addition, 37-1-304(1), MCA expressly prohibits an examination for reciprocal licensure. As such, the requirement of a specific test result is impermissible. Section 2-4-305(6)(a), MCA requires that administrative rules be "consistent and not in conflict with the statute." Therefore, as part of Red Tape Relief efforts to simplify, clarify, and ensure validity of administrative rules, this rule is amended. Additionally, (2)(c) is repealed because it is unnecessary for applicants to produce copies of laws and rules from other states for an evaluation of credentials to take place.

24.141.505 ELECTRICAL CONTRACTOR LICENSING (1) An applicant for an original license or renewal of an electrical contractor license shall submit a completed application, appropriate fees, and ~~certification of~~ shall affirm compliance with the following:

(a) the Workers' Compensation Act, worker's compensation coverage as required under 39-71-101, MCA, et seq.; and

(b) the Unemployment Insurance Law, unemployment insurance coverage as required under 39-51-101, MCA, et seq.

(2) through (7) remain the same.

AUTH: 37-1-131, 37-68-201, MCA
IMP: 37-68-312, MCA

REASON: The proposed amendment to this rule is necessary to avoid a procedural ambiguity in licensure requirements. Certain individuals and entities may be in compliance with the Workers' Compensation Act and the Unemployment Insurance Law without obtaining coverage under either law. To avoid confusion in these instances, the proposed amendments allow an applicant to affirm compliance with the laws, rather than to obtain coverage. These amendments do not bar verification of the requirements or exemptions by the department or the board as deemed necessary.

24.141.509 NONROUTINE APPLICATIONS AND APPLICANTS WITH CRIMINAL CONVICTIONS (1) ~~For the purpose of processing nonroutine applications, the~~ Nonroutine applications must be reviewed and approved by the board before a license may be issued. The board incorporates the definitions ~~of~~ and procedures for routine and nonroutine ~~at~~ applications in ARM 24.101.402 by reference.

(2) ~~Nonroutine applications must be reviewed and approved by the board before a license may be issued.~~ The board incorporates the procedures for processing applications from applicants with criminal convictions in ARM 24.101.406 by reference.

AUTH: 37-1-131, 37-68-201, MCA

IMP: 37-1-101, 37-1-131, Title 37, chapter 1, part 2, MCA

REASON: The proposed amendment is necessary to simplify language and to combine ARM 24.141.509 and 24.141.511. Both rules adopt the department's model rules for licensing boards found in ARM Title 24, chapter 101.

24.141.2102 CONTINUING EDUCATION (1) ~~Eight~~ Sixteen hours of continuing education must be obtained ~~for each year in~~ during the renewal cycle. ~~Requisite hours may be obtained during any portion of the renewal cycle.~~ A minimum of ~~four of the~~ eight ~~annual~~ hours ~~shall be certified as covering~~ must cover NEC updates. ~~Newly licensed~~

(a) New graduates of approved apprenticeship programs are exempt from the continuing education ~~requirements in~~ requirement for the first renewal cycle.

(b) Licensees ~~changing~~ advancing from journeyman or residential to a higher level of licensure are not exempt from completing the required hours of continuing education.

(2) Licensees are responsible for maintaining ~~a record~~ records of completion and submitting certificates ~~for courses or seminars and the hours attended~~ to the department upon request. ~~A random audit of~~

(a) Course completion certificates ~~may be performed by the board~~ shall contain the licensee's name, the course title, the date, and a breakdown of the course content (NEC or industry) by credit hour.

(b) The department may perform a random audit of licensees' continuing education hours at any time. The department shall determine the percentage to audit based on a statistically relevant sampling of the total number of licensees and the compliance rate of past audits.

~~(3)~~ (c) ~~An applicant~~ Basic electric courses or apprentice-level courses are not accepted for continuing education ~~provider approval shall submit:~~ credit.

~~(a) a completed board-approved provider application with the required fees;~~

~~(b) a completed board-approved application for each course with the required fees;~~

~~(c) a sample completion certificate as outlined in (4)(d);~~

~~(d) documented proof from the provider that instructors are credentialed as outlined in (4)(c); and~~

~~(e) a course description and credit hours of each course.~~

(3) The department, on behalf of the board, maintains a list of approved continuing education courses. The department shall review and approve continuing education courses and issue an approval number to the course. To gain approval, the department shall verify the following:

(a) the course addresses NEC updates or other subjects related to the industry by credit hour;

(b) the course certificate meets the requirements of (2)(a);

(c) the course instructor is a Montana-licensed journeyman or master electrician or the instructor has substantially equivalent credentials; and

(d) the licensees' course participation is verifiable online within 30 days of course completion.

~~(4) Curricula for courses or seminars must be preapproved by the State~~

~~Electrical Board or designated board representative. Requests for approval of courses or seminars must be made no later than 60 days prior to the date of the seminar. Each preapproved course shall be assigned a course approval number by the board to be listed on the certificate of completion. Board approval of said courses and seminars expires August 1 of each license renewal year.~~

~~(a) Curricula of courses or seminars shall address NEC updates, or other subjects related to the electrical industry. Basic electric courses or apprentice-type courses will not be approved. Course curricula must provide a breakdown of the type of credit hours (NEC or industry), which must be included in the completion certificate.~~

~~(b) Credits for courses or seminars will be given in a minimum of four-hour increments.~~

~~(c) The course sponsor~~ is ~~responsible to ensure that instructors are credentialed as one or more of the following:~~

~~(i) graduate electrical engineer licensed as an electrician;~~

~~(ii) Montana licensed electrician with additional training in related subject areas;~~

~~(iii) community college or vo-tech instructor with board-approved electrical credentials;~~

~~(iv) certified teacher with board-approved electrical credentials;~~

~~(v) certified electrical apprentice instructors;~~

~~(vi) certified electrical inspectors; or~~

~~(vii) electrical continuing education instructors from other areas as approved by the board.~~

~~(d) Certificates required by (3) must contain the following:~~

~~(i) date of course;~~

~~(ii) title of course;~~

~~(iii) name of person completing the course;~~

~~(iv) State Electrical Board approval number; and~~

~~(v) breakdown of NEC and/or industry related credit hours.~~

~~(e) Certificates must be verifiable online within 30 days of completion of the course.~~

~~(5) Representatives of the department or members of the State Electrical Board shall be able to attend and monitor the courses or seminars without charge.~~

~~(6)~~ (4) ~~Continuing~~ The board shall honor continuing education courses approved by ~~another~~ a state which has a reciprocal licensing agreement with the board ~~will be honored. The reciprocal state's~~, or if the department determines that the state's courses are substantially equivalent to the courses approved in this state. The course approval number, date of course, and credit breakdown must appear on the completion certificate.

~~(7) Completion certificates must be submitted within 30 days upon request by the board office for the purpose of licensing renewal audits. Failure to supply continuing education completion certificates when requested by the board office shall be cause for disciplinary actions.~~

AUTH: 37-1-131, 37-1-319, 37-68-201, MCA
IMP: 37-1-131, 37-1-306, 37-1-319, MCA

REASON: The proposed amendments are necessary to simplify and clarify the board's requirements for continuing education. The amendments acknowledge that the department recognizes substantially equivalent licenses and training for out-of-state licensees pursuant to the legislature's 2019 amendments to 37-1-304, MCA. The proposed amendments allow the department, on behalf of the board, to determine the percentage of licensees that are audited for compliance with continuing education requirements. This amendment is necessary because the department completes the audits on behalf of the board, and the department is in the best position to determine the relevant percentage of licensees to audit based on analysis of relevant data such as the number of licensees and rates of compliance for prior audits.

24.141.2301 UNPROFESSIONAL CONDUCT (1) ~~In addition to the activities set forth in 37-1-316, MCA,~~ Failure by a licensee of the following ~~activities are also deemed by the board to be~~ is considered unprofessional conduct:

(a) Electrical contractors shall have their contractor's license posted at their place of business.

(b) A licensed residential electrician shall perform work only in the employment of a licensed electrical contractor. A licensed residential electrician shall perform work only on residential construction consisting of less than five living units in a single structure.

(c) A licensed journeyman or master electrician who is not the responsible electrician for a licensed electrical contractor shall perform work only in the employment of a licensed electrical contractor.

(d) The responsible electrician of a licensed electrical contractor shall not allow any person to perform electrical work unless properly licensed or working with a valid temporary practice permit.

(e) The responsible electrician of a licensed electrical contractor is responsible for timely obtaining any permit or inspection required by the state of Montana or the state or local building code enforcement entity and is responsible for ensuring that the work performed meets the requirements of the state of Montana and the National Electrical Code.

~~(a)~~ (f) ~~failing to~~ A licensee shall correct violations of the Montana State Electrical Code as adopted by the Department of Labor and Industry's Building ~~Codes~~ and Commercial Measurements Bureau, after having received proper notice and adequate time to do so, as determined by the inspector involved in light of the seriousness of the violation(s) and other similarly relevant considerations~~;~~.

~~(b)~~ (g) ~~being adjudicated~~ A licensee shall comply with all relevant laws under Title 39, MCA~~,~~. Any adjudication by the court or agency having jurisdiction~~, as having violated~~ of a violation of any workers' compensation, unemployment insurance, or independent contractor law in Montana while engaged in the electrical trade is unprofessional conduct.~~;~~

~~(c) failure to comply with continuing education requirements set forth in ARM 24.141.2102; and~~

~~(d)~~ (h) ~~failing or refusing to~~ A licensee shall provide the board verification of an employee's hours worked in the employ of the licensee when the request for verification is made for purposes of licensure.

~~(2) Upon findings of unprofessional conduct as defined in (1) and determined in accordance with the Montana Administrative Procedure Act, the board may impose sanctions, including but not limited to those allowed by and listed in 37-1-312, MCA.~~

(2) A licensee's commission of any act of sexual abuse, sexual misconduct, or sexual exploitation, whether or not it is related to the licensee's practice, is considered unprofessional conduct.

(3) A licensee's failure to respond to board inquiry or furnish information requested by the board, department investigators, or board representatives is considered unprofessional conduct.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-68-201, MCA
IMP: 37-1-307, 37-1-316, 37-1-317, 37-1-319, 37-68-301, 37-68-315, MCA

REASON: The proposed amendments are necessary to consolidate the board's rules regarding unprofessional conduct. New (1)(a) through (e) are transferred from (2), (3), (4), (5), and (6) from ARM 24.141.403, repealed below. Old (1)(c) is repealed because failure to comply with continuing education requirements is not a form of unprofessional conduct, and it is addressed under 37-1-321, MCA, and NEW RULE III. New (2) includes specific language making any form of sexual abuse, sexual misconduct, or sexual exploitation unprofessional conduct to standardize the language across the department's boards, programs, and license types. New (3) makes the failure to respond to a department inquiry or investigation unprofessional conduct to facilitate consistency in department investigations and the associated penalties across the department's boards, programs, and license types.

4. The proposed new rules are as follows:

NEW RULE I JOURNEYMAN AND MASTER ELECTRICIAN EXPERIENCE REQUIREMENTS (1) For applicants seeking a journeyman electrician license, a maximum of 50 percent of the practical experience may be residential in nature. The balance must be either commercial, industrial, institutional, or a combination thereof.

(2) For all applicants seeking a master electrician license, the practical and journeyman level experience must be either commercial, residential, industrial, institutional, or a combination thereof. No more than 50 percent of the practical or journeyman level experience may be obtained by residential work.

AUTH: 37-1-131, 37-68-201, MCA
IMP: 37-1-131, 37-68-304, 37-68-305, MCA

REASON: NEW RULE I is necessary because it contains (3) and (4) of ARM 24.151.501, repealed below, that specify experience requirements for licensure. The board proposes removing the requirement in ARM 24.141.501(3) requiring at

least 20 percent of a master electrician's 8000 hours of experience (or 1600 hours of the 8000 hours required by 37-68-304, MCA) to be residential work. The minimum required hours of residential work for master-level licensure were added to ARM 24.141.501 in 2009, with the intention of protecting the public by requiring residential work hours of both journeyman and master-level electricians. 15 Mont. Admin. Reg. 1368 (August 13, 2009). The board asserts that the removal of this requirement will not sacrifice the health and safety of Montanans, and journeyman electricians continue to gain significant experience with residential materials and techniques. First, the board asserts that the requirement of 20 percent of hours to be residential work is not commensurate with the knowledge and experience required to become a master electrician. The board asserts that the master-level examination focuses more on commercial and industrial electrical work. Second, residential work is the primary focus of the journeyman-level examination, and apprentices and applicants for journeyman-level licensure typically gain significant experience with residential work. Third, the board recognizes significant changes to the National Electrical Code since 2009. Specifically, before 2009, "residential work," meaning a building of fewer than five dwelling units under 37-68-102(11), MCA, was primarily completed using "Romex™" cable (non-metallic sheathed cable) and installation materials. In 2009, Romex cable was not approved for use in most non-residential electrical work. However, due to developments in safety and materials, the National Electrical Code currently allows for expanded use of Romex-type cable in projects such as apartment buildings with five or more dwelling units. Many journeyman electricians in Montana gain significant experience with residential materials and techniques while working on such apartment buildings; however, the work is legally classified as commercial work, and those hours cannot be counted towards the current minimum requirement of 20 percent of resident work. The board proposes the repeal of this minimum requirement for master-level work to reflect the changes to the National Electrical Code and the realities of journeyman electrical work in Montana.

NEW RULE II ADMINISTRATIVE SUSPENSION (1) The board authorizes the department to:

(a) administratively suspend licenses for deficiencies set forth in 37-1-321(1)(a) through (e), MCA; or

(b) file a complaint pertaining to the deficiencies in (1) that are based on repeated or egregious conduct, or that have co-occurring misconduct allegations that directly implicate public safety and may warrant formal disciplinary action.

(2) An administrative suspension is not a negative, adverse, or disciplinary action under Title 37, MCA, and is not reportable under federal law or the department's licensee lookup and license verification databank.

AUTH: 37-1-131, 37-68-201, MCA
IMP: 37-1-321, MCA

REASON: NEW RULE II is necessary because 37-1-321, MCA, permits the board to authorize the department to take certain non-disciplinary actions regarding licensees who are out of compliance with administrative licensure requirements such as not meeting continuing education requirements, failing to respond to continuing

education audits, not paying required fees, not meeting initial licensing requirements, and noncompliance with board final orders. The new rule allows the department to continue to address these matters with licenses in a timely manner, without requiring renewed or continued board approval. Furthermore, the new rule provides further notice to licenses and the public of the department's authorized administrative actions regarding licensure.

NEW RULE III PANEL MEMBERS (1) The board chair shall assign board members to the screening panel and the adjudication panel. The board chair may replace or reassign panel members, but the panels must be divided as follows:

(a) The screening panel shall consist of two board members, including one journeyman or master electrician member of the board and one public member of the board.

(b) The adjudication panel shall consist of three board members, including one journeyman or master electrician member of the board and one public member of the board.

(2) The screening panel will not consider anonymous complaints.

AUTH: 37-1-131, MCA
IMP: 2-15-1764, 37-1-307, MCA

REASON: NEW RULE III is necessary because it replaces ARM 24.141.2401, and the new rule addresses the requirements for both the screening panel and the adjudication panel.

5. The rules proposed to be repealed are as follows:

24.141.403 LICENSEE RESPONSIBILITIES

AUTH: 37-1-131, 37-68-201, MCA
IMP: 37-1-308, 37-1-316, 37-1-317, 37-68-301, 37-68-315, MCA

REASON: The proposed repeal of this rule is necessary because the rule is largely duplicative of statute, and certain sections of the rule are more logically located in ARM 24.141.2301. Section (1) is duplicative of 37-1-301(2), 37-68-315, and 37-68-316, MCA, making it unnecessary. Sections (2), (3), (4), (5) and (6) are transferred to ARM 24.141.2301 to consolidate the board's rules addressing unprofessional conduct. Sections (7) and (8) are repealed because they are duplicative of 37-1-316, 37-1-317, 37-68-301, and 37-68-302, MCA, making the sections unnecessarily duplicative of statute.

24.141.501 MASTER, JOURNEYMAN AND RESIDENTIAL ELECTRICIAN APPLICATIONS

AUTH: 37-1-131, 37-68-201, MCA
IMP: 37-1-131, 37-68-302, 37-68-304, 37-68-305, MCA

REASON: The proposed repeal is necessary because the rule is largely duplicative of statute. Section (1) is duplicative of 37-68-304, MCA; (2) is duplicative of 37-68-102 and 37-68-304, MCA; and (5) is duplicative of 37-68-305, MCA, meaning these sections are unnecessary. Sections (3) and (4) are transferred to NEW RULE I. Section (6) is transferred to ARM 24.141.503 because it concerns examinations for licensure. Section (7) is repealed because it does not reflect current business practices of the board for application review.

24.141.507 MILITARY TRAINING OR EXPERIENCE

AUTH: 37-1-145, MCA
IMP: 37-1-145, MCA

REASON: The proposed repeal is necessary because the 2023 Legislature adopted 2023 Mont. Laws Ch. 390 (House Bill 583), which generally revised the educational certification and endorsement reciprocity and occupational licensing reciprocity for military members, military spouses, and veterans. The new sections and amendments to 37-1-145, MCA, regarding military training or experience apply to all the department's occupational licensing boards and programs, rendering individual board rules on the subject duplicative.

24.141.511 APPLICANTS WITH CRIMINAL CONVICTIONS

AUTH: 37-1-131, MCA
IMP: 37-1-101, 37-1-131, MCA

REASON: The proposed repeal is necessary because the substance of the rule is amended into ARM 24.141.509. The rules are combined because both rules adopt the department's model rules for licensing boards found in ARM Title 24, chapter 101.

24.141.2401 SCREENING PANEL

AUTH: 37-1-131, MCA
IMP: 37-1-307, MCA

REASON: The proposed repeal is necessary because the substance of the rule is transferred to NEW RULE III.

6. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., April 19, 2024.

7. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

8. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on March 12, 2024, by electronic mail.

10. Pursuant to 2-4-111, MCA, the board has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

11. Department staff has been designated to preside over and conduct this hearing.

STATE ELECTRICAL BOARD
DERRICK HEDALEN, PRESIDENT

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State March 12, 2024.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through XI and the repeal of ARM 1.1.101, 1.2.101 through 1.2.519, 1.3.101 and 1.3.102, and 1.3.301 through 1.3.313 pertaining to State Agency Administrative Rulemaking	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND REPEAL

TO: All Concerned Persons

1. On April 12, 2024, at 11:00 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office conference room, Room 260, State Capitol, Helena, Montana, to consider the proposed adoption and repeal of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m., April 5, 2024, to advise us of the nature of the accommodation needed. Please contact Andy Ritter, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-7911; fax (406) 444-3976; TDD/Montana Relay Service 711; or email Andrew.Ritter@mt.gov.

3. The Secretary of State proposes to adopt the following rules:

NEW RULE I INTRODUCTION AND RULEMAKING REQUIREMENTS

(1) Agencies conducting administrative rulemaking must comply with Title 2, chapter 4, MCA, which outlines the requirements for administrative rulemaking, and the rules in this chapter, that guide agencies and supplement the statutory requirements. Additional guidance can be found on the Secretary of State's website at https://rules.mt.gov.

AUTH: 2-15-401, MCA
IMP: 2-15-401, 2-4-305, 2-4-306, MCA

REASONABLE NECESSITY: Pursuant to 2-15-401, MCA, the Secretary of State may adopt rules to effectively administer Title 2, Chapter 4 (Administrative Procedure Act) of the Montana Code Annotated. Currently, many of the administrative rules implementing this chapter unnecessarily repeat statutory language. According to 2-4-305, MCA, rules may not unnecessarily repeat statutory language. In order to increase use and effectiveness of the administrative rules on this topic, this rulemaking notice proposes significant changes to the current organization of ARM Title 1, including the repeal of several subchapters and the

proposed adoption of similar but streamlined rules on agency rulemaking. The proposed new rules supplement and do not unnecessarily repeat statutory language, but given agencies' past reliance on administrative rules to reference statutory provisions, this rule directs agencies to the required statutory provisions regarding agency administrative rulemaking and identifies the availability of additional resources.

NEW RULE II FILING DATES AND EFFECTIVE DATES (1) The schedule established by the Secretary of State for publication of the Montana Administrative Register, including filing deadlines for agency submissions, is located on the SOS website at https://sosmt.gov/arm.

(2) An agency may submit notices in advance of the filing deadline for inclusion in a future issue of the Montana Administrative Register and, except as provided in 2-4-306, MCA, rule changes included in the adoption notice are adopted on the date the adoption notice is filed with the Secretary of State and are effective after publication in the Register.

AUTH: 2-4-302, 2-4-306, 2-15-401, MCA
IMP: 2-4-311, 2-4-312, MCA

REASONABLE NECESSITY: Pursuant to 2-15-401, MCA, the Secretary of State may adopt rules to effectively administer Title 2, Chapter 4 (Administrative Procedure Act) of the Montana Code Annotated.

According to 2-4-312, MCA, the Secretary of State shall publish the register at least once a month but not more often than twice a month. Statute gives the Secretary of State's Office the authority to determine the publication schedule. Historically, the Secretary of State has adopted the publication schedule in ARM 1.2.419; however, adopting the publication schedule through the administrative rule process is cumbersome and unnecessary. A publication schedule that is not in rule will allow the Secretary of State the flexibility to determine how and when to publish the Register, and it will simplify the manner in which agencies and the public can learn when the Register will be published, benefiting the state.

Additionally, the rule proposal provides agencies flexibility on when they submit notices to the Office for publication. However, by allowing agencies to submit notices in advance of the issue deadline, it is important to acknowledge the impact of the statutory provisions regarding the date of adoption and effective date.

NEW RULE III ADMINISTRATIVE RULES – GENERAL STRUCTURE

(1) Every rule must be assigned a name or catchphrase and a three-part numerical identifier, with each part separated by a decimal point. For example, if a rule is numbered 44.23.501:

- "44" represents the title number assigned to the department or agency;
- "23" represents the chapter number;
- "5" (the first one or two digits in the third part) represents the subchapter number; and
- "01" (the last two digits) represents the individual rule number.

(a) The entire number is referred to as the rule number. When a Montana administrative rule is referred to in a rulemaking notice or in rule text, it shall be cited as "ARM (rule number)". For example, "ARM 44.23.501".

(b) The name or catchphrase assigned to a rule must be a short phrase which summarizes the contents of a rule.

(2) Each rule is broken down into sections and subsections which cover a single idea. Each rule must be drafted in an outline form using the format standards developed by the Secretary of State to ensure consistency.

(3) For capitalization, hyphenation, punctuation, and grammar requirements, refer to the Gregg Reference Manual. The Secretary of State adopts and incorporates by reference the Gregg Reference Manual, 11th edition, which sets forth rules of style, grammar, and usage. A copy of the manual may be obtained from McGraw Hill on their website at mheducation.com.

AUTH: 2-4-306, 2-4-311, 2-15-401, MCA
IMP: 2-4-306, 2-4-311, MCA

REASONABLE NECESSITY: Pursuant to 2-15-401, MCA, the Secretary of State may adopt rules to effectively administer Title 2, chapter 4 (Administrative Procedure Act) of the Montana Code Annotated. This rule establishes formatting requirements to ensure a clear and logical organization, consistency, and professional publishing standards for the Administrative Rules of Montana.

NEW RULE IV ORGANIZATIONAL RULE (1) An agency shall adopt an organizational rule in accordance with 2-4-201, MCA. A model organizational rule contains:

(a) an overall description of the agency's history, purpose, and/or general duties;

(b) the organizational structure of the agency (i.e., list of divisions and/or organizational chart);

(c) a description of the functions of the agency divisions;

(d) a description of any boards, advisory committees, etc. attached to the agency;

(e) location and contact information where the public can obtain information or make requests; and

(f) any other information the agency deems beneficial.

AUTH: 2-4-202, 2-15-401, MCA
IMP: 2-4-201, 2-4-202, 2-4-302, MCA

REASONABLE NECESSITY: In accordance with 2-4-202, MCA, this rule gives a model form for agencies to use when developing an organizational rule. The proposed rule meets the statutory guidelines for what an agency shall include in accordance with 2-4-201, MCA.

NEW RULE V RULES OF PRACTICE (1) An agency shall adopt rules of practice in accordance with 2-4-201, MCA. Model rules of practice contain:

(a) all formal and informal procedures available;

(b) a description of where forms and instructions used by the agency can be obtained; and

(c) any other overall office rules the agency deems necessary.

AUTH: 2-4-202, 2-15-401, MCA
IMP: 2-4-201, 2-4-202, MCA

REASONABLE NECESSITY: In accordance with 2-4-202, MCA, this rule gives a model form for agencies to use when developing the rules of practice or what is sometimes called "procedural rules." The proposed rule meets the statutory guidelines for what shall be included in accordance with 2-4-201, MCA.

NEW RULE VI PUBLICATION AND ARRANGEMENT OF THE MONTANA ADMINISTRATIVE REGISTER

(1) The Montana Administrative Register (MAR) is published at https://rules.mt.gov according to the schedule posted on the Secretary of State's website (https://sosmt.gov/arm).

(2) In accordance with 2-4-312, MCA, the MAR is arranged into sections.

(a) Rulemaking notices that propose changes to current rules are published in the section named "Proposal Notices."

(b) Adoption notices identifying the new official rule text are published in the section named "Adoption Notices."

(c) Attorney General opinions and declaratory rulings and other special informational notices of agencies are published in the section named "Other."

AUTH: 2-15-401, MCA
IMP: 2-4-312, MCA

REASONABLE NECESSITY: Pursuant to 2-15-401, MCA, the Secretary of State may adopt rules to effectively administer Title 2, chapter 4 (Administrative Procedure Act) of the Montana Code Annotated. The requirements for the Montana Administrative Register are outlined in 2-4-312, MCA. This rule prescribes how the Secretary of State will comply with the statutory requirements related to the publication of the Montana Administrative Register.

NEW RULE VII NOTICE FORMAT (1) Agencies submitting notices to the Secretary of State's Office for publication in the Montana Administrative Register must follow the format standards and use the system developed by the Secretary of State to ensure consistency and maintain professional publishing standards.

AUTH: 2-15-401, MCA
IMP: 2-4-306, 2-4-312, MCA

REASONABLE NECESSITY: Pursuant to 2-15-401, MCA, the Secretary of State may adopt rules to effectively administer Title 2, Chapter 4 (Administrative Procedure Act) of the Montana Code Annotated. This rule establishes notice

formatting requirements for consistency and professional publishing standards for the Montana Administrative Register.

NEW RULE VIII PUBLIC COMMENTS (1) In accordance with 2-4-305, MCA, an agency shall consider all comments received regarding the proposed rulemaking. If the rule is adopted and comments were received, the adoption notice must include a brief statement of reasons for and against the adoption of the rule. The agency may choose to summarize comments and agency responses as its "Statement of Reasons" in the adoption notice. If an agency receives any comments urging against adoption and the agency proceeds to adopt the proposed rule, the reasons for overruling the considerations must be stated.

AUTH: 2-15-401, MCA
IMP: 2-4-305, 2-15-401, MCA

REASONABLE NECESSITY: Pursuant to 2-15-401, MCA, the Secretary of State may adopt rules to effectively administer Title 2, Chapter 4 (Administrative Procedure Act) of the Montana Code Annotated. In 2-4-305, MCA, a requirement is established for an agency to include a "Statement of Reasons" in the adoption notice. In practice, agencies typically use public comments as the method for fulfilling the statutory requirement. The proposed rule clarifies how the practice relates to the statutory requirement.

NEW RULE IX AGENCY APPROVAL REQUIREMENTS (1) Prior to electronically submitting a notice for publication in the Register, the agency employee must ensure the head of the agency, chairperson of the governing board, or agency-selected designee approves the submission. The approval shall be indicated by inclusion of the approver's name on the notice submission.

(2) The agency rule reviewer appointed in accordance with 2-4-110, MCA, may provide an electronic signature to indicate the signer's affirmation that the review was performed to the best of the reviewer's ability.

AUTH: 2-15-401, MCA
IMP: 2-4-110, MCA

REASONABLE NECESSITY: Pursuant to 2-15-401, MCA, the Secretary of State may adopt rules to effectively administer Title 2, Chapter 4 (Administrative Procedure Act) of the Montana Code Annotated. This rule provides an approval process for rule review and department authorization that can be accomplished in an electronic filing system.

NEW RULE X AGENCY FILING FEES (1) Starting in fiscal year 2026 and each fiscal year thereafter, an agency shall choose one of two methods for paying filing fees for the services provided by the Secretary of State in the review and publication of notices in the Montana Administrative Register (MAR).

(a) Pay $60 per page for each notice at the time of publication.

(b) Pay on an annual basis a fee based on the volume of notice submissions.

(i) 1 to 4 notices - $550
(ii) 5 to 9 notices - $1,650
(iii) 10 to 15 notices - $3,475
(iv) 16 to 25 notices - $4,400
(v) 26 to 35 notices- $8,675
(vi) 36 or more notices - $16,750

AUTH: 2-15-401, 2-15-405, MCA
IMP: 2-4-313, 2-15-405, MCA

REASONABLE NECESSITY: Pursuant to 2-15-401, MCA, the Secretary of State may adopt rules to effectively administer Title 2, Chapter 4 (Administrative Procedure Act) of the Montana Code Annotated and 2-15-405, MCA requires fees charged by the Secretary of State to be set by administrative rule. Historically, ARM 1.2.423 established the filing fees. This rulemaking package proposes significant changes to the structure of the administrative rules related to the Administrative Procedure Act. One of the changes includes the repeal of ARM 1.2.423. The proposed rule substantially maintains the text of the repealed rule but also includes an additional payment option for agencies to allow flexibility for budgeting and publication options. In addition to ensuring fees are commensurate with cost, a comparison to agency payments in previous fiscal years was done to provide more flexibility without an increase in cost for the agencies. Delaying the effective date to fiscal year 2026 allows the agency time to evaluate usage in the new system.

NEW RULE XI BILL SPONSOR CONTACT (1) For efficiency and accuracy, the Secretary of State uses the Legislative Services Division's roster at leg.mt.gov as the contact list for legislators to meet the requirements of 2-4-302, MCA.

AUTH: 2-15-401, MCA
IMP: 2-4-302, 2-15-401, MCA

REASONABLE NECESSITY: Pursuant to 2-15-401, MCA, the Secretary of State may adopt rules to effectively administer Title 2, Chapter 4 (Administrative Procedure Act) of the Montana Code Annotated. This rule is proposed to guide agencies in how they can efficiently and accurately comply with the statutory provisions in 2-4-302, MCA, with regard to contacting bill sponsors.

4. The Secretary of State proposes to repeal the following rules:

1.1.101 DECLARATION OF PURPOSE

AUTH: 2-4-311, MCA
IMP: 2-4-311, MCA

1.2.101 GENERAL OVERVIEW OF ARM TITLE 1

AUTH: 2-4-311, MCA

IMP: 2-4-311, MCA

1.2.102 OFFICIAL VERSIONS

AUTH: 2-4-306, 2-15-401, MCA
IMP: 2-4-306, 2-4-311, 2-4-312, 2-4-313, MCA

1.2.104 ADMINISTRATIVE RULES SERVICES FEES

AUTH: 2-15-401, 2-15-405, MCA
IMP: 2-4-311, 2-4-312, 2-4-313, 2-15-405, MCA

1.2.201 TITLE NUMBER ASSIGNMENTS

AUTH: Not applicable
IMP: Not applicable

1.2.202 ARRANGEMENT OF THE ADMINISTRATIVE RULES OF MONTANA

AUTH: 2-4-306, 2-4-311, 2-15-401, MCA
IMP: 2-4-306, 2-4-311, MCA

1.2.204 ARRANGEMENT OF TITLE CONTENT

AUTH: 2-4-201, 2-4-306, 2-4-311, 2-15-401, MCA
IMP: 2-4-306, 2-4-311, MCA

1.2.205 RULE TYPES AND LOCATIONS

AUTH: 2-4-201, 2-4-306, 2-4-311, 2-15-401, MCA
IMP: 2-4-303, 2-4-306, 2-4-311, MCA

1.2.206 ARM PAGE UPDATES

AUTH: 2-4-201, 2-4-306, 2-4-311, 2-15-401, MCA
IMP: 2-4-306, 2-4-311, MCA

1.2.207 RETENTION OF OBSOLETE ARM PAGES

AUTH: 2-4-313, 2-15-401, MCA
IMP: 2-4-313, MCA

1.2.210 ADOPTION OF AN AGENCY RULE BY INCORPORATION BY REFERENCE

AUTH: 2-4-306, 2-15-401, MCA

IMP: 2-4-307, MCA

1.2.211 MODEL RULES: LOCATION AND INCORPORATION BY REFERENCE

AUTH: 2-4-202, 2-4-307, 2-15-401, MCA
IMP: 2-4-202, MCA

1.2.212 RULE NUMBERING METHOD FOR THE ADMINISTRATIVE RULES OF MONTANA

AUTH: 2-4-306, 2-15-401, MCA
IMP: 2-4-306, MCA

1.2.214 CATCHPHRASES

AUTH: 2-4-306, 2-15-401, MCA
IMP: 2-4-306, MCA

1.2.215 INTERNAL CATCHPHRASES

AUTH: 2-4-306, MCA
IMP: 2-4-306, MCA

1.2.216 OUTLINE FORM

AUTH: 2-4-306, 2-15-401, MCA
IMP: 2-4-306, MCA

1.2.217 RULE HISTORY NOTES

AUTH: 2-4-201, 2-4-306, 2-4-311, 2-15-401, MCA
IMP: 2-4-303, 2-4-306, 2-4-311, MCA

1.2.218 PAGE NUMBERING SYSTEM

AUTH: 2-4-201, 2-4-306, 2-4-311, 2-15-401, MCA
IMP: 2-4-306, 2-4-311, MCA

1.2.219 TABLE OF CONTENTS

AUTH: 2-4-201, 2-4-306, 2-4-311, 2-15-401, MCA
IMP: 2-4-306, 2-4-311, MCA

1.2.220 CROSS REFERENCE TABLE

AUTH: 2-4-201, 2-4-306, 2-4-311, 2-15-401, MCA

IMP: 2-4-306, 2-4-311, MCA

1.2.225 OLD-TO-NEW NUMBERING TABLE

AUTH: 2-4-306, 2-4-311, 2-15-401, MCA
IMP: 2-4-306, 2-4-311, MCA

1.2.226 NEW-TO-OLD NUMBERING TABLE

AUTH: 2-4-306, 2-4-311, 2-15-401, MCA
IMP: 2-4-306, 2-4-311, MCA

1.2.229 CITING THE ADMINISTRATIVE RULES OF MONTANA

AUTH: 2-4-201, 2-4-306, 2-15-401, MCA
IMP: 2-4-306, MCA

1.2.401 PROCEDURES FOR FILING PROPOSED RULE CHANGES

AUTH: 2-4-306, 2-4-312, 2-15-401, MCA
IMP: 2-4-306, 2-4-312, MCA

1.2.402 PREPARATION OF RULE CHANGES FOR INSERTION IN ARM

AUTH: 2-4-201, 2-4-306, 2-4-311, 2-15-401, MCA
IMP: 2-4-306, 2-4-311, MCA

1.2.404 ADMINISTRATIVE ORDER

AUTH: 2-4-306, 2-15-401, MCA
IMP: 2-4-303, 2-4-306, MCA

1.2.411 UPDATING PROCEDURES

AUTH: 2-4-201, 2-4-306, 2-15-401, MCA
IMP: 2-4-306, MCA

1.2.419 FILING AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER

AUTH: 2-15-401, MCA
IMP: 2-4-312, MCA

1.2.420 SCHEDULED SUBMISSION DATES FOR REPLACEMENT PAGES TO UPDATE THE ADMINISTRATIVE RULES OF MONTANA

AUTH: 2-4-306, MCA

IMP: 2-4-311, MCA

1.2.422 MONTANA ADMINISTRATIVE REGISTER

AUTH: 2-4-306, 2-4-312, 2-15-401, MCA
IMP: 2-4-306, 2-4-312, MCA

1.2.423 AGENCY FILING FEES

AUTH: 2-15-401, 2-15-405, MCA
IMP: 2-4-313, 2-15-405, MCA

1.2.519 BASIC FORMAT REQUIREMENTS

AUTH: 2-4-201, 2-4-306, 2-15-401, MCA
IMP: 2-4-110, 2-4-303, 2-4-306, MCA

1.3.101 INTRODUCTION AND DEFINITIONS

AUTH: 2-4-202, MCA
IMP: 2-4-202, MCA

1.3.102 NOTICE OF AGENCY ACTION THAT IS OF SIGNIFICANT INTEREST TO THE PUBLIC

AUTH: 2-4-202, MCA
IMP: 2-3-103, 2-4-202, 2-4-302, MCA

1.3.301 INTRODUCTION AND DEFINITIONS

AUTH: 2-4-202, MCA
IMP: 2-4-201, 2-4-202, MCA

1.3.302 APPLICATION OF MONTANA ADMINISTRATIVE PROCEDURE ACT

AUTH: 2-4-202, MCA
IMP: 2-4-102, 2-4-202, MCA

1.3.304 RULEMAKING, BIENNIAL REVIEW

AUTH: 2-4-202, MCA
IMP: 2-4-202, MCA

1.3.305 ORGANIZATIONAL RULE

AUTH: 2-4-202, MCA

IMP: 2-4-201, 2-4-202, 2-4-314, MCA

1.3.307 RULEMAKING, INTRODUCTION

AUTH: 2-4-202, 2-15-401, MCA
IMP: 2-4-111, 2-4-202, 2-4-302, 2-4-303, 2-4-305, MCA

1.3.308 RULEMAKING, PETITION TO ADOPT, AMEND, OR REPEAL RULE

AUTH: 2-4-202, MCA
IMP: 2-4-202, 2-4-315, MCA

1.3.309 RULEMAKING, PROPOSAL NOTICE

AUTH: 2-4-202, 2-15-401, MCA
IMP: 2-4-111, 2-4-202, 2-4-302, 2-4-305, 2-4-307, MCA

1.3.311 RULEMAKING, OPPORTUNITY TO BE HEARD

AUTH: 2-4-202, MCA
IMP: 2-4-202, 2-4-302, 2-4-305, MCA

1.3.312 RULEMAKING, AGENCY ACTION

AUTH: 2-4-202, MCA
IMP: 2-4-202, 2-4-305, 2-4-307, MCA

1.3.313 RULEMAKING, TEMPORARY EMERGENCY RULES AND TEMPORARY RULES

AUTH: 2-4-202, MCA
IMP: 2-4-202, 2-4-303, 2-4-306, MCA

REASONABLE NECESSITY: The Secretary of State proposes this rulemaking to update, consolidate, simplify, and make more user friendly the administrative rules governing state agency rulemaking. There are currently 44 rules governing administrative rulemaking. These rules are contained in ARM Title 1, chapters 1 through 3. Many of these rules have not been updated in over 15 years and were designed for a paper-based system. The office has reviewed Title 2, chapter 4, MCA (Administrative Procedure Act) and assessed whether each current rule serves a legitimate purpose or whether it is repetitive of statute. The department is proposing to repeal each of the current rules and to adopt NEW RULES I through XI in their place. Many of the new rules consolidate and incorporate existing requirements from the current rules, where a legitimate purpose exists.

5. With regard to the requirements of 2-4-302(1)(c), MCA, it has been determined that the proposed repeal of ARM 1.2.423 in combination with the proposal of NEW RULE X would provide approximately $100,000 in cumulative savings for 21 state agencies in fiscal year 2025 and will not have a fiscal impact starting in fiscal year 2026. While NEW RULE X provides a new, more flexible payment option for agencies filing notices in the Montana Administrative Register starting in fiscal year 2026, NEW RULE X also allows agencies to continue to use the current fee structure without impact. It has been determined that the proposed repeal of ARM 1.2.104 would provide approximately $300 in cumulative savings annually for five subscribers.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Angela Nunn, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing angela.nunn@mt.gov, and must be received no later than 5:00 p.m., April 19, 2024.

7. Austin James, Secretary of State's Office, has been designated to preside over and conduct the hearing.

8. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may submit their request online at https://sosmt.gov/arm/secretary-of-state-administrative-rules/ or submit a written request which includes the name and contact information of the person who wishes to receive notices. Written requests may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1301 E. 6th Avenue, P.O. Box 202801, Helena, MT 59620-2801, or emailed to sosarm@mt.gov.

9. The bill sponsor contact requirements of 2-4-302, MCA do not apply.

10. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the adoption and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Austin Markus James
Austin Markus James
Rule Reviewer

/s/ Christi Jacobsen
Christi Jacobsen
Secretary of State

Dated this March 12, 2024.

BEFORE THE MONTANA STATE LIBRARY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 10.102.1158, 10.102.4002, 10.102.9102, and 10.102.9105 pertaining to updating rules to comply with legislation	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On February 9, 2024, the Montana State Library published MAR Notice No. 10-102-2302 pertaining to the proposed amendment of the above-stated rules at page 198 of the 2024 Montana Administrative Register, Issue Number 3.

2. The State Library has amended the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ Jennie Stapp
Jennie Stapp
Rule Reviewer

/s/ Robyn Scribner
Robyn Scribner
Commission Chair
Montana State Library

Certified to the Secretary of State March 12, 2024.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the repeal of an emergency rule closing the Fairweather Fishing Access Site in Gallatin County	)))	NOTICE OF REPEAL OF EMERGENCY RULE

TO: All Concerned Persons

1. On January 5, 2024, the Department of Fish, Wildlife and Parks (department) adopted an emergency rule closing the Fairweather Fishing Access Site, in Gallatin County, to all public occupation and recreation in MAR Notice No. 12-619, published at page 78 of the 2024 Montana Administrative Register, Issue Number 1. The emergency rule was adopted because of ice jams on the Missouri River causing water to channel and flood multiple portions of the Fairweather Fishing Access Site causing dangerous conditions to persons recreating and fishing.

2. The rule was to be in place until the department determined the Fairweather Fishing Access Site was again safe for occupation and recreation. Given that the ice jams on the Missouri River have dispersed and that the Fairweather Fishing Access Site no longer poses a danger to the public, the department is repealing RULE I FAIRWEATHER FISHING ACCESS SITE EMERGENCY CLOSURE.

3. The repeal of RULE I is effective March 13, 2024, when this rule notice is filed with the Secretary of State.

4. The repeal of the emergency rule will be sent as a press release to newspapers throughout the state and posted on the department's website at fwp.mt.gov. Moreover, signs informing the public of the closure will be removed at access points.

5. The special notice requirement of 2-4-303, MCA, has been met. All committee members of the Environmental Quality Council, with addresses provided on the Montana Legislature's website (leg.mt.gov), were contacted by email on March 13, 2024. Lastly, the emergency rule repeal notice will be sent to interested parties and published in Issue Number 6 of the 2024 Montana Administrative Register.

/s/ Sarah M. Clerget
Sarah M. Clerget
Chief Legal Counsel
Department of Fish, Wildlife and Parks

/s/ Kevin Rechkoff
Kevin Rechkoff
Rule Reviewer

Certified to the Secretary of State March 13, 2024.

BEFORE THE PUBLIC SAFETY OFFICER
STANDARDS AND TRAINING COUNCIL
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through IV and the amendment of ARM 23.13.101, 23.13.102, 23.13.103, 23.13.104, 23.13.204, 23.13.205, 23.13.206, 23.13.207, 23.13.208, 23.13.209, 23.13.210, 23.13.212, 23.13.301, 23.13.302, 23.13.304, 23.13.601, 23.13.702, 23.13.703, 23.13.704, 23.13.705, 23.13.713, 23.13.714, 23.13.716, 23.13.719, 23.13.720, 23.13.721, 23.13.801, 23.13.803, 23.13.804, 23.13.805, 23.13.806, and 23.13.807 pertaining to the certification of public safety officers	)	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On December 8, 2023, the Public Safety Officer Standards and Training (POST) Council published MAR Notice No. 23-13-280 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1695 of the 2023 Montana Administrative Register, Issue Number 23.

2. The department has adopted the above-stated rules as proposed: NEW RULES I (23.13.105), II (23.13.218), III (23.13.305), and IV (23.13.306).

3. The department has amended the above-stated rules as proposed.

4. The POST Council has thoroughly considered the comments received. Copies of the written comments were provided to the council and will be provided to the public on request. Having fully considered the comments, the POST Council has decided to adopt and amend the rules as originally proposed. A summary of the comments received and the council's responses are as follows:

COMMENT 1: Fallon County Sheriff Trenton Harbaugh provided written comment, stating that ARM 23.13.703 should be amended to read "upon not sustained findings all records be removed from officer's file."

RESPONSE TO COMMENT 1: This comment is not relevant to the adoption or amendment of the rules proposed by POST in this rulemaking notice; therefore, no further response from POST is necessary.

COMMENT 2: Nanette Gilbertson, executive director of the Montana Sheriffs and Peace Officers Association, expressed support for POST's proposed amendment of ARM 23.13.807 in a written comment, stating that the changes would "maximize their training time by focusing on skills that emphasize officer safety through tactics and weapons handling."

RESPONSE TO COMMENT 2: The POST Council agrees that the changes to the SWAT course will improve the Primary SWAT courses offered to Montana public safety officers.

/s/ DAVID ORTLEY
David Ortley
Deputy Attorney General
Rule Reviewer

/s/ JESSE SLAUGHTER
Jesse Slaughter
Chair
Montana POST Council

Certified to the Secretary of State March 12, 2024.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I pertaining to reimbursement to counties for expert witness expenses in certain criminal proceedings	)))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On January 26, 2024, the Department of Justice published MAR Notice No. 23-18-276 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 105 of the 2024 Montana Administrative Register, Issue Number 2.

2. The department has adopted the above-stated rule as proposed: NEW RULE I (23.18.401).

3. No comments or testimony were received.

/s/ DAVID ORTLEY
David Ortley
Deputy Attorney General
Rule Reviewer

/s/ AUSTIN KNUDSEN
Austin Knudsen
Attorney General
Department of Justice

Certified to the Secretary of State March 12, 2024.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.22.701, 24.22.704, 24.22.707, and 24.22.713 and the repeal of ARM 24.22.710 pertaining to work-based learning grants	)))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On February 9, 2024, the Department of Labor and Industry (agency) published MAR Notice No. 24-22-411 regarding the public hearing on the proposed changes to the above-stated rules, at page 209 of the 2024 Montana Administrative Register, Issue No. 3.

2. On March 1, 2024, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. No comments were received by the deadline.

3. The agency has amended ARM 24.22.701, 24.22.704, 24.22.707, and 24.22.713 as proposed.

4. The agency has repealed ARM 24.22.710 as proposed.

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State March 12, 2024.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.87.703, 37.87.903, 37.87.1011, 37.87.1410, and 37.106.1916 pertaining to children's mental health services	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 3, 2023, the Department of Public Health and Human Services published MAR Notice No. 37-1031 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1528 of the 2023 Montana Administrative Register, Issue Number 21. An amended notice of public hearing was published on December 8, 2023, at page 1737 of the 20236 Montana Administrative Register, Issue Number 23.

2. The department has amended the following rules as proposed: ARM 37.87.703, 37.87.903, 37.87.1011, 37.87.1410, and 37.106.1916.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received, and the department's responses are as follows:

COMMENT #1: One commenter requested clarification on the table that outlines services that may not be provided concurrently in the proposed Children's Mental Health Bureau Medicaid Services Provider Manual which states Therapeutic Group Home and CBPRS may not be provided concurrently.

RESPONSE #1: The department has reviewed this section of the manual, and we thank the commenter for bringing this to our attention. The table in the manual has been updated to reflect that group community-based psychiatric rehabilitation and supports (CBPRS) may be provided concurrently with therapeutic group home services.

4. The department intends to apply the above-stated rule amendments retroactively to May 12, 2023.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State March 12, 2024.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.34.702, 37.40.1017, 37.40.1407, and 37.90.406 pertaining to HCBS Setting Regulations	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On December 22, 2023, the Department of Public Health and Human Services published MAR Notice No. 37-1032 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1785 of the 2023 Montana Administrative Register, Issue Number 24.

2. The department has amended the following rules as proposed: ARM 37.34.702, 37.40.1017, 37.40.1407, and 37.90.406.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received, and the department's responses are as follows:

COMMENT #1: The department received an inquiry about the applicability of heightened scrutiny to a supportive housing building owned by a community provider.

RESPONSE #1: As part of the HCBS Final Rules, CMS has defined settings presumed not to be home and community-based, and these will need to undergo heightened scrutiny (HS). These settings include 1) settings located in a building that is also a publicly or privately operated facility providing inpatient institutional treatment; 2) settings in a building on the grounds of, or immediately adjacent to, a public institution; and 3) any other settings that effectively isolate individuals receiving Medicaid HCBS from the broader community of individuals also receiving Medicaid HCBS services. If a building does not meet the above criteria, heightened scrutiny does not apply.

COMMENT #2: A commenter asked how does the state envision enhancing community choice, community inclusion, dignity of risk, as well as person centered planning and services throughout Medicaid HCBS service systems.

RESPONSE #2: The department appreciates the question. The department is committed to a continuous improvement process to enhance the choice, inclusion, and dignity rooted in HCBS. This includes meeting the settings requirements to ensure that Medicaid-supported individuals received the same services as individuals for whom there are other sources of payment. The department has implemented provider self-assessments, validation visit tools, staff and member

interviews when necessary and is conducting onsite visits to ensure compliance with the federal and state settings regulations.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State March 12, 2024.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.34.1101 and the repeal of ARM 37.34.1102, 37.34.1103, 37.34.1105, 37.34.1107, 37.34.1108, 37.34.1114, 37.34.1117, and 37.34.1119 pertaining to Developmental Disabilities Program Plan of Care	))))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On December 22, 2023, the Department of Public Health and Human Services published MAR Notice No. 37-1041 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1791 of the 2023 Montana Administrative Register, Issue Number 24.

2. The department has amended and repealed the above-stated rules as proposed.

3. No comments or testimony were received.

4. The department intends to apply the rule amendments and repeals retroactively to July 1, 2023.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State March 12, 2024.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.85.105 pertaining to updating Medicaid and non-Medicaid provider rates, fee schedules, and effective dates	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On December 22, 2023, the Department of Public Health and Human Services published MAR Notice No. 37-1061 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1807 of the 2023 Montana Administrative Register, Issue Number 24.

2. The department has amended the following rule as proposed: ARM 37.85.105.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received, and the department's responses are as follows:

COMMENT #1: The department received one comment at the hearing in support of the proposed rule amendments. The commenter also said he appreciates the addition of a separate rate for inpatient rehabilitation facilities.

RESPONSE #1: The department appreciates the comment and the support.

4. The department intends to apply this rule amendment retroactively to October 1, 2023.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State March 12, 2024.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through III and the amendment of ARM 42.39.104, 42.39.115, 42.39.401, 42.39.405, 42.39.409, 42.39.413, and 42.39.415 pertaining to implementation of House Bills 128, 903, and 948 (2023), and revising requirements applicable to chemical, infused product, and mechanical manufacturers of marijuana	)))))))))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On December 22, 2023, the Department of Revenue (department) published MAR Notice No. 42-1072 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1817 of the 2023 Montana Administrative Register, Issue Number 24.

2. On January 18, 2024, the department held a public hearing to consider the proposed adoption and amendment. The following commenters appeared and provided oral testimony to the proposed rulemaking: Pepper Petersen, Montana Cannabis Guild (Guild); Antonette Lininger, Sacred Sun Farms; Kate Cholewa, Montana Cannabis Industry Association (MTCIA); Shanda Hayward and Tamara Hayward, Secured Canna T. The department received written comments from Anthony Saur, the Green Bee; Joanna Barney, Sacred Sun Farms; Jen Hensley, Hensley & Associates; and Kate Cholewa, MTCIA.

3. The department has adopted NEW RULE I (42.39.402) and amended ARM 42.39.115 and 42.39.415 as proposed.

4. The department has adopted and amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE II (42.39.403) MARIJUANA MANUFACTURER LICENSE~~E~~ – INFUSED PRODUCTS (1) and (2) remain as proposed.

(3) A marijuana manufacturer licensee that engages in marijuana-infused product manufacturing may not:

(a) utilize a branded, commercially manufactured food product (e.g., Chex Mix, Nerds Ropes) as a marijuana-infused product except when commercially manufactured food products are used as ingredients in a marijuana-infused product in a way that renders them unrecognizable as the commercial food product in the final marijuana-infused product and the licensee does not state or advertise to the

consumer that the final marijuana-infused product contains the commercially manufactured food product except on the product's ingredient list;

(b) through (d) remain as proposed.

~~(4) A marijuana manufacturer licensee that produces marijuana-infused products must have current, written SOPs at the licensed premises available for inspection that detail the following:~~

~~(a) an employee illness policy that requires employees to report to the person in charge information about their health and activities as they relate to diseases that are transmissible through food; and~~

~~(b) procedures for monitoring and maintaining refrigeration and cold holding equipment, if applicable.~~

AUTH: 16-12-104, 16-12-112, 16-12-221, MCA
IMP: 16-12-104, 16-12-109, 16-12-112, 16-12-201, 16-12-203, 16-12-207, 16-12-208, 16-12-210, 16-12-221, 16-12-301, MCA

NEW RULE III (42.39.404) MARIJUANA MANUFACTURING LICENSE – MECHANICAL MANUFACTURING (1) remains as proposed.

~~(2) A marijuana manufacturer licensee must have current, written SOPs at the licensed premises available for inspection that details the procedures for the safe handling, maintenance, and storage of a hydraulic press.~~

AUTH: 16-12-104, 16-12-112, 16-12-221, MCA
IMP: 16-12-104, 16-12-109, 16-12-112, 16-12-201, 16-12-203, 16-12-207, 16-12-208, 16-12-210, 16-12-221, 16-12-301, MCA

42.39.104 LICENSE, APPLICATION, AND RENEWAL FEES (1) Initial licensure and renewal fees for the following license types and endorsements are:

(a) through (c) remain as proposed.

(d) Marijuana dispensary license: $5,000 per licensed premises.

(d) remains as proposed but is renumbered (e).

~~(e)~~ (f) Manufacturer license:

(i) remains as proposed.

(ii) $10,000 for each manufacturing facility that produces, on a monthly basis, between ten and 15 pounds of concentrate; and

(iii) $20,000 for each manufacturing facility that produces, on a monthly basis, ~~between~~ 15 ~~and 20~~ pounds or more of concentrate~~;~~.

~~(iv) $30,000 for each manufacturing facility that produces, on a monthly basis, between 20 and 30 pounds of concentrate;~~

~~(v) $40,000 for each manufacturing facility that produces, on a monthly basis, between 30 and 40 pounds of concentrate;~~

~~(vi) $50,000 for each manufacturing facility that produces, on a monthly basis, between 40 and 50 pounds of concentrate;~~

~~(vii) $60,000 for each manufacturing facility that produces, on a monthly basis, over 50 pounds of concentrate.~~

(f) and (g) remain as proposed but are renumbered (g) and (h).

(2) through (4) remain as proposed.

~~(5) Application to change or update controlling beneficial owners, financial interest holders, sources of funding, or other business organization: $1,000, which is nonrefundable and must be paid in full before the department will begin processing the application.~~

(6) remains as proposed but is renumbered (5).

AUTH: 16-12-112, 16-12-202, 16-12-221,16-12-222, 16-12-226, 16-12-508, 16-12-533, MCA
IMP: 16-12-112, 16-12-221, 16-12-222, 16-12-226, 16-12-508, 16-12-533, MCA

42.39.401 MARIJUANA MANUFACTURER LICENSES – GENERAL PROVISIONS (1) through (9) remain as proposed.

(10) A marijuana manufacturer licensee must have current, written SOPs at the licensed premises and available for inspection for the following:

(a) each category and type of marijuana that it produces ~~for each final form product, the equipment, ingredients, and manufacturing process used, which shall be kept confidential by the department~~;

(b) remains as proposed.

(c) proper handling and storage of any solvent, gas, or other chemical used in processing or on the licensed premises; and

(d) proper disposal of any waste produced during processing in accordance with ARM 42.39.310~~;~~.

~~(e) how employees are trained in the use of all emergency equipment such as eye-wash stations, fire extinguishers, chemical spill kits, or any applicable safety concern; and~~

~~(f) precautions to ensure that employees with illnesses or open lesions be excluded from any operations which may be expected to result in contamination of marijuana products until their condition is corrected.~~

(11) A marijuana manufacturer licensee and an employee of a marijuana manufacturer licensee may only transport marijuana and marijuana products that are in the licensee's seed-to-sale tracking system inventory in accordance with 16-12-222(4), MCA, and ARM 42.39.413(3) through ~~(18)~~ (16) and may not transport the marijuana or marijuana products of other licensees without a marijuana transporter license.

AUTH: 16-12-112, MCA
IMP: 16-12-221, 16-12-222, MCA

42.39.405 MARIJUANA CULTIVATOR LICENSES (1) through (9) remain as proposed.

(10) A marijuana cultivator licensee must maintain a log of all pesticides, fertilizers, or other agricultural chemicals used in the production of marijuana in the seed-to-sale tracking system, which must be updated ~~weekly~~ monthly. The log shall be kept confidential by the department.

(11) remains as proposed.

(12) A marijuana cultivator licensee and an employee of a marijuana cultivator licensee may only transport marijuana and marijuana products that are in the licensee's seed-to-sale tracking system inventory in accordance with 16-12-222(4), MCA, and ARM 42.39.413(3) through ~~(18)~~ (16) and may not transport the marijuana or marijuana products of other licensees without a marijuana transporter license.

AUTH: 16-12-112, MCA
IMP: 16-12-112, 16-12-203, 16-12-210, 16-12-221, 16-12-222, 16-12-223, MCA

42.39.409 MARIJUANA DISPENSARY LICENSES (1) through (6) remain as proposed.

(7) A marijuana dispensary licensee may not sell a branded, commercially manufactured food product (e.g., Chex Mix, Nerds Ropes) as a marijuana-infused product except when commercially manufactured food products are used as ingredients in a marijuana-infused product in a way that renders them unrecognizable as the commercial food product in the final marijuana-infused product and the licensee does not state or advertise to the consumer that the final marijuana-infused product contains the commercially manufactured food product except on the product's ingredient list.

(8) through (15) remain as proposed.

(16) A marijuana dispensary licensee and an employee of a marijuana dispensary licensee may only transport marijuana and marijuana products that are in the licensee's seed-to-sale tracking system inventory in accordance with 16-12-222(4), MCA, and ARM 42.39.413(3) through ~~(18)~~ (16) and may not transport marijuana or marijuana products of other licensees without a marijuana transporter license.

(17) and (18) remain as proposed.

AUTH: 16-12-112, 16-12-222, MCA
IMP: 16-12-112, 16-12-201, 16-12-222, 16-12-224, MCA

42.39.413 TRANSPORTATION OF MARIJUANA AND MARIJUANA PRODUCTS; MARIJUANA TRANSPORTER LICENSES (1) and (2) remain as proposed.

(3) All distribution and delivery of marijuana and marijuana products must:

(a) and (b) remain as proposed.

(c) be accompanied by a transport manifest derived from the seed-to-sale tracking system that contains the following information and remains with the product the entire time in transit:

(i) and (ii) remain as proposed.

~~(iii) the most direct route to be traveled to complete the transport;~~

(iv) through (vi) remain as proposed but are renumbered (iii) through (v).

~~(vii)~~ (vi) name and signature of each licensee or its employee accompanying the transport; and

~~(viii)~~ (vii) a complete description of the marijuana or marijuana product being transported. The description must include:

(A) through (C) remain as proposed.

(d) be accomplished within ~~72 hours~~ seven days from the date and time of departure.

(4) If the transport requires an overnight stay during the planned direct route to complete the transfer, the transporting licensee must:

(a) and (b) remain as proposed.

(c) store the in-transit product in ~~the~~ a licensee's licensed premises.

(5) The transporter of the marijuana or marijuana product must record in the seed-to-sale tracking system:

(i) and (ii) remain as proposed but are renumbered (a) and (b).

(6) through (8) remain as proposed.

~~(9) A receiving licensed premises may not accept any marijuana or marijuana products from a transporter that does not match the description and/or quantity shipped on the transport manifest.~~

(10) and (11) remain as proposed but are renumbered (9) and (10).

~~(12) Except as provided in (b), a receiving licensed premises must reject a transport that contains marijuana or marijuana products that do not match the description and/or quantity shipped on the transport manifest.~~

~~(a) Transport manifest discrepancies must be reconciled by the originating licensee at the originating licensed premises prior to transport.~~

~~(b) A receiving licensed premises may accept packages on a transfer manifest with a +/- of 0.9 grams per pound for scale variance and -5 to -7 grams per pound for drying.~~

(13) through (18) remain as proposed but are renumbered (11) through (16).

AUTH: 16-12-112, 16-12-222, MCA
IMP: 16-12-112, 16-12-222, MCA

5. The department has thoroughly considered the comments and testimony received. A summary of the comments received, and the department's responses are as follows:

COMMENT 1: Ms. Lininger commented about manufacturer licenses that amounted to a request to the department to authorize a manufacturing "site license" under NEW RULES I through III that would allow a manufacturer to engage in its various types of manufacturing at more than one designated site.

Ms. Barney similarly commented that manufacturers should be licensed like cultivators. Ms. Barney questioned whether rules for cultivators may be applied to manufacturers and attempted to validate similar licensing standards because both cultivators and manufacturers are described as having "tiered" licensing in administrative rule and in department publications.

RESPONSE 1: Manufacturing facilities are licensed per the requirements of 16-12-221, MCA, and unlike a cultivator and cultivation tiers who may have multiple facilities under the license (i.e., sites), a manufacturer licensee can only obtain one

license for one facility. While a manufacturer licensee may engage in more than one type of manufacturing, as is supported by (1) in each of NEW RULES I through III, any combination of manufacturing activities are still conducted at one licensed facility. Any change to manufacturing facility licensing would require an act of the Legislature to amend 16-12-221, MCA.

As to Ms. Barney's comments about "tiers," the department uses the same word to describe both cultivator and manufacturer production thresholds for license fees, but the term is not vague or inconsistently applied, nor does it create a conflict elsewhere.

COMMENT 2: Ms. Lininger requested additional clarity in NEW RULE II(3)(a) and ARM 42.39.409(7), which transfers the commercially manufactured food product restrictions from ARM 42.39.401(12), to reflect the allowance of food product description in an ingredients list for a marijuana food product.

RESPONSE 2: The department agrees that disclosure of a commercial food product by its popular name on a marijuana product's ingredients list is permissible. Based on the comment, the department has amended NEW RULE II(3)(a) and ARM 42.39.409(7) to reflect the allowance.

COMMENT 3: Ms. Lininger commented that the department's proposals in NEW RULE I(4) are burdensome requirements that, potentially, require the disclosure of an individual's protected health information beyond the applicable laws which protect that information. Ms. Lininger requested amendment of the rule to remove the requirement.

RESPONSE 3: Based on the comments provided, the department concurs and has removed NEW RULE I(4) upon adoption.

COMMENT 4: Similar to Comment 3, Ms. Lininger questions the need for the department's proposals for an additional SOP in NEW RULE III(2) on the basis of it placing an unnecessary burden upon a licensee which is outside the scope of the department's regulatory purview.

RESPONSE 4: Montana businesses, including manufacturing licensees, should implement self-directed, safe manufacturing practices, but many do not. However, manufacturer licensees are also subjected to other regulatory requirements in the operation of their businesses, such as building, health, and fire code compliance. With this understanding, the department agrees to withdraw the SOP requirement in NEW RULE III(2) and will defer to a jurisdiction's respective code enforcement officials to determine safe manufacturing practice compliance.

COMMENT 5: The department's proposal to strike current ARM 42.39.104(1)(d) was proposed as an anticipatory response for dispensary licensees based on litigation that was pending at that time in the Montana First Judicial District Court for Lewis and Clark County which challenged dispensary license fee increases enacted under House Bill 903 (2023).

RESPONSE 5: By its Order dated January 5, 2024, the Court requires the state to return to the dispensary license fee structure reflected in ARM 42.39.104(1)(d) prior to the department's proposal to strike. Accordingly, the department has reinstated ARM 42.39.104(1)(d).

COMMENT 6: Mr. Petersen provided extensive commentary about the department's new marijuana manufacturing production tier revisions proposed in ARM 42.39.401. While much of the commentary was outside the scope of this rulemaking, Mr. Petersen commented the Guild's disagreement with the structuring of the proposed tiers and corresponding license fees. Mr. Petersen commented that the increased license fees were burdensome on small businesses yet penalized larger businesses for achieving economies of scale, and do not align with the legislative directive in 16-12-112, MCA, that fees may not exceed the amount necessary to cover department costs implementing marijuana regulation. Mr. Petersen requested a return to status quo or, in the alternative, that the department revise manufacturing to two tiers: one for small manufacturers and one for large manufacturers.

Ms. Lininger commented similar to Mr. Petersen regarding the number of proposed manufacturing tiers and suggested three tiers that cover zero to ten pounds, 11 to 20 pounds, and 21 to 30 pounds of average monthly manufactured concentrate.

Ms. Cholewa commented the reality that business owners (i.e., licensees) will always want lower license fees and that MTCIA seeks survival of variety in Montana's marketplace which includes a balance of fee structures. Ms. Cholewa commented that two tiers would only result in an inexpensive license tier and an expensive license tier. She commented MTCIA's support of a more stratified tier schedule like the proposed model but also one agreeable to businesses. Ms. Cholewa and the MTCIA believe, however, that additional discussion – and likely legislation – is necessary to strike a balance across all manufacturing licensees. Ms. Cholewa also requested the department provide clarity regarding how manufacturing production is measured and how consistency is applied from inspector to inspector.

Ms. Barney commented that there is inconsistency in the language of the manufacturing license fee in rule relative to the pound amount of concentrate manufactured by a licensee. Ms. Barney directs attention to the term "on a monthly basis" in the existing and proposed tiers and that the overage calculation is supposed to be the average production on a monthly basis over a twelve-month period. For example, a tier 3 licensee can produce up to 180 pounds of concentrate per year, which is an average monthly production of 15 pounds of concentrate, even if the volume of production varies from month to month within the twelve-month license period. Ms. Barney suggests clarifying definitions for (1) the calculation period (calendar year, license year, fiscal year); (2) "monthly basis"; (3) "shall pay an additional $1,000 per pound"; and (4) what concentrate is counted towards the amount of pounds-produced for tier designation (or overage). Is this the point of conversion from plant into extracted oil, infused fatty medium, or refined final product?

RESPONSE 6: The department appreciates the various points of view expressed by the commenters.

The department disagrees with Mr. Petersen that the proposed production-related license fees conflict with the intent of 16-12-112, MCA. The department also contends that a manufacturer license fee schedule tiered on production is the most equitable and penalizes neither small nor large licensees if the fee increases are proportional with production.

The department appreciates Ms. Cholewa's comments concurring in tiered license fee structures and agrees that additional policy guidance from the Legislature regarding manufacturing tiers is likely necessary.

Based on the comments received and weighing the department's duty and ability to provide an equitable and predictable tier structure, the department has removed the proposed multi-tier structure and expanded the existing third manufacturing license tier in (1)(f)(iii) to reflect a monthly average over the prior 12 months of 15 pounds or more of finalized concentrate. This is somewhat similar to Ms. Lininger's suggestion but without a stated cap at tier 3.

In response to Ms. Cholewa's request to improve clarity and application of department processes regarding measurement of production to its inspectors, the department responds that it is not the inspectors who analyze and determine concentrate production and the role of an inspector is generally limited to the delivery of a concentrate production report to a licensee. The Cannabis Control Division (CCD) utilizes a dedicated business analyst who has developed a detailed and verifiable procedural model for the estimation of concentrate manufacturing based on concentrate production information that manufacturing licensees input into METRC. Should Ms. Cholewa desire a copy of the model process for production estimation, she may request it directly from the CCD.

In response to Ms. Barney, the phrase "on a monthly basis" in ARM 42.39.104 mirrors what the Legislature provides in 16-12-221(6), MCA, and the consistency in rule is necessary. As to additional clarity of the calculation period, the department has already provided it in ARM 42.39.401(5): "In determining whether a marijuana manufacturer licensee has manufactured above its licensure level, the department will determine the average amount of concentrate produced each month over the previous 12 months." The department contends this level of clarity is sufficient. In response to the $1,000 per pound license fee for concentrate manufacturing overage, the department directs Ms. Barney to the amendments in the rule which removed the per pound fee and adjusted the manufacturing tiers upon adoption of this rulemaking.

Regarding Ms. Barney's question about what concentrate is counted towards production, or overage, the department refers Ms. Barney to its response about the restructured tiers, to its response to Ms. Cholewa about its model process for production reporting, and that the department's production calculation policy is based on a finalized concentrate model that seeks to exclude intermediate crude from consideration when calculating the appropriate manufacturing tier level, or any potential production overages. Similar to the department's offer to Ms. Cholewa, should Ms. Barney desire a copy of the concentrate production model process, she may request it directly from the CCD.

COMMENT 7: The department received testimony at the public hearing from Mr. Petersen and Ms. Lininger that the application fees proposed in ARM 42.39.104(5) and the existing change of location fee transferred from ARM 42.39.104(6) to (1)(g) are excessive. Mr. Petersen believes the application fees proposed in (5) exceed the amount of any additional work expended by the department in the review and approval of the listed transactions. Ms. Lininger offered the suggestion that the department allow license changes such as those listed in proposed (5) to be done for minimal cost or for free at the annual renewal of a license.

Mr. Saur commented similarly to Mr. Petersen and Ms. Lininger regarding the application fee proposed in ARM 42.39.104(5).

RESPONSE 7: The Legislature authorized the department to designate certain fees sufficient to administer and enforce the Montana Marijuana Regulation and Taxation Act (Act) (see 16-12-112(1)(q), MCA).

The department appreciates the comments regarding the location change fee transferred to ARM 42.39.104(1)(g), but this is not a new fee, and it reflects a substantial transaction requiring a substantial amount of department time and resources to process and approve, which the department stated in the fee's adoption under MAR Notice No. 42-1033 (effective January 1, 2022). The department continues to believe the fee is appropriate and declines to change it at this time.

In response to comments about the application fee in proposed ARM 42.39.104(5), the department has withdrawn consideration of the fee, and removed proposed (5), while more data is collected regarding the amount of department time and resources that is expended on processing the types of transactions associated with the proposed fee.

In response to Ms. Lininger's comments about no-fee changes, the department affirms its previous response that most current license change transactions require department time and resources to process and approve and that commensurate application processing fees to the transaction are justifiable. However, the department believes it is foreseeable that certain license changes become rudimentary and warrant no-fee processing as licensing systems progress and increase in efficiency.

COMMENT 8: Similar to Comment 4, Ms. Lininger commented on the department's amendments proposed in ARM 42.39.401(10)(e) and (f) on the basis of placing an unnecessary burden upon a licensee which is outside the scope of the department's regulatory purview. Ms. Lininger also commented that the amendments in (10)(a) appeared unnecessary and the desired effect could be reached replacing the word "marijuana" in the existing text with "product."

RESPONSE 8: The department has removed ARM 42.39.401(10)(e) and (f) for the same reasons provided in Response 4. As for the proposed amendment in (10)(a), upon further consideration, the department has removed the amendment and reinstated the prior text upon adoption.

COMMENT 9: The department received testimony at the public hearing from Mr. Petersen and Ms. Lininger regarding the department's proposals in ARM 42.39.405(10) regarding the frequency of logging pesticides, fertilizers, and other agricultural chemicals into the seed-to-sale tracking system. While the commenters were appreciative of the extension of data entry time from daily to weekly, they requested the period of time to be monthly.

RESPONSE 9: The department responds that the current rule section provided no logging frequency and the proposed amendment sought clarity and sought to lessen the current daily requirement interpretation.

The department appreciates the feedback and has amended the frequency of logging in ARM 42.39.405(10) to the suggested monthly basis.

COMMENT 10: Ms. Lininger provided testimony at the public hearing which amounted to a recitation of Governor Gianforte's Executive Order 2021-01 (Red Tape Relief Initiative)(Initiative)), and suggested that the department is not weighing Initiative directives in its promulgation of administrative rules or procedures that she deems administratively burdensome. Ms. Lininger also requested the department provide data points and adopt measurable results that support proposed rulemaking.

RESPONSE 10: The department prepares all proposed rulemaking in compliance with the Montana Administrative Procedure Act (MAPA), such as the inclusion of fiscal impact and small business impact statements and bill sponsor notifications, and attempts to implement goals of the Initiative for less administrative regulation, where possible. The department also receives rulemaking approval from the Governor's office on policy matters and for meeting Initiative goals, where available, prior to proposal. Notwithstanding, MAPA and the Initiative do not supersede the department's regulatory duties under the Montana Marijuana Regulation and Taxation Act which emphasize compliance and strict liability in the interest of public health and safety.

The department appreciates Ms. Lininger's suggestion for results-oriented metrics and agrees that data-driven decisions are a best practice where regulatory structures support them, and the goals of the metrics are specified. The department contends that public policy, statute, and administrative rules regarding cannabis are still very new and inclusion of results-oriented metrics in the adoption of rules would need to reflect clarified policy goals established by the Legislature.

COMMENT 11: Mr. Petersen is critical of the department's proposed amendments to ARM 42.39.413 because wholesale deliveries are often completed by budtenders, not management of the licensee; that additional business related to wholesaling is being conducted that does not technically relate to the transport of product but adversely impacts proposed transport deadlines; and that the administrative burden associated with compliance of the proposed requirements does not solve any problem stated by the department.

RESPONSE 11: The department disagrees that the transport of marijuana and marijuana products across the state should be compared to common freight or

parcel delivery services as Mr. Petersen suggests, and that position does not correspond with the duty the Legislature delegated to the department in 16-12-222, MCA, to protect public health and safety through strict inventory and transport reporting controls. Many of Mr. Petersen's comments fall outside the scope of the rulemaking, excepting transport deadlines and administrative burdens, and the department contends the justification for the amendments to ARM 42.39.413 remains accurate and reliable.

Based on cumulative commenter feedback, the department has amended or removed certain proposals in ARM 42.39.413 upon adoption which should address Mr. Petersen's concerns regarding transport deadlines and administrative burdens.

COMMENT 12: Mr. Petersen, Ms. Lininger, Ms. Hensley, and Mss. Hayward also commented opposition to the proposed reconciliation of transported inventory, schedule variances, reasonable variance in the product received, and requested detailed clarification about transport logistics for layovers, rejection of product by the receiving licensee, logistics, human error, and placement of liability on shortages and "ownership" of product logged into METRC during a layover. Ms. Cholewa echoed the comment that human error is a real thing for which the rule does not adequately account.

RESPONSE 12: The department appreciates the constructive comments relative to transport logistics and the acceptance/rejection of inventory by a receiving licensee and the impacts on the transporter.

Based on the feedback received and the commentary at the public hearing, the department agrees that the proposals in ARM 42.39.413(9) and (12) may create unintended logistical impediments for the efficient transport of product between licensed premises. The department has removed those rule sections upon adoption. The department has also amended ARM 42.39.413(3)(d) upon adoption to extend the amount of time to complete transport from 72 hours to seven days.

As to Mss. Haywards' comments about ownership of inventory during layovers and the requirement that marijuana or marijuana products stay within a licensed premises, the department directs them to current ARM 42.39.413(11) (renumbered as (12) with this rulemaking), which provides that a transport licensee's vehicle is a licensed premises for administration of the rule; or to (15) (renumbered as (16)) which provides for an optional storage facility endorsement which a transport licensee may incorporate into its operation.

While the department appreciates Ms. Cholewa's comments regarding human error in inventory acceptance and processing, the department cannot provide a thorough response based on lack of specificity. The department directs Ms. Cholewa to ARM 42.39.203(8) which provides that "All on-premises and in-transit marijuana item inventories must be reconciled in the seed-to-sale tracking system at the close of business each day." The department believes any discrepancies in shipped inventory and the received inventory, whether due to human error or not, should be discoverable when reconciled in METRC.

COMMENT 13: Mss. Hayward both commented several instances that they believe ARM 42.39.413 requires clarity because the stated requirements apply more

to a licensee conducting an internal transfer of marijuana than a third-party transporter. They asked, "how does third party transport work in the department's eyes?" They asked further, "what is the expectation for a third-party transporter versus an internal transporter?"

RESPONSE 13: The question "how does third party transport work?" is too vague and outside the scope of the rulemaking for the department to provide a thorough response in this notice.

The department contends that ARM 42.39.413 implements what the Legislature enacted under 16-12-222, MCA, allowing the transport of marijuana or marijuana products within the state, whether that transport occurs through an independent marijuana transporter licensee (i.e., third-party transport - 16-12-222(1), MCA) or as a part of an existing licensee's operation (i.e., internal transfer - 16-12-222(4), MCA). The department concedes that transport logistics differ between third-party transport licensees and other licensees like cultivators, manufacturers, dispensaries that engage in the transport of their own product, or testing laboratories that transport sample batches for quality assurance testing. But until such time as the Legislature provides additional statutory guidance that directs specified treatment of third-party transporters from other licensees, the department is limited to proposing what it believes are prudent regulations and being open to revision based on feedback to clarify the regulatory environment for transport licensees.

COMMENT 14: Mss. Hayward indicate that proposed ARM 42.39.413(3)(c)(iii) which requires "the most direct route" as an example that applies to internal transport because planning transport routes for third-party transporters is dependent on the needs and locations of the licensees being serviced and may not be the "most direct route" if strictly construed by the department. Similar to other comments about the department's proposed 72-hour product transport deadline in (3)(d), Mss. Hayward also asked whether third-party transporters were subject to the same deadline, because many licensees want management only to accept and process deliveries, and management often does not work on weekends.

RESPONSE 14: Based the comments and feedback received, the department has removed proposed (3)(c)(iii) from ARM 42.39.413 upon adoption. As to Mss. Haywards' comments regarding the 72-hour transport deadline, the department directs them to the second paragraph of Response 12.

COMMENT 15: Mss. Hayward commented to proposed (9) through (12) that carriers/transporters should not be responsible for the contents of a transported package as long as the package is delivered intact because the third-party transporters receive packages that are locked and sealed. Whether a licensee has a discrepancy in the amount of product received, or desires to reject a shipment, should not have any bearing on the transporter and should be resolved between the shipper and recipient. Mss. Hayward also ask what is a transporter supposed to do if the receiving licensee rejects the shipment, especially if the transporter is in mid-route across the state.

RESPONSE 15: The department directs Mss. Hayward to Responses 12 and 13.

COMMENT 16: Ms. Hensley commented that proposed ARM 42.39.413(3)(c)(iv) and (v) appear to be overly complicated and conflict with proposed (5)(i). The first requires actual date but estimated times of departure and arrival; the second requires actual time. Further, does the department suggest that the transporter adjust the manifest at departure or arrival? If (5) through (7) are renumbered (6) through (8) but remain the same, then may it be interpreted to be adjustment at departure, and if that is the case, what is the point of estimate language in (iv) and (v)?

RESPONSE 16: As discussed in Response 13, ARM 42.39.413 implements what the Legislature enacted under 16-12-222, MCA. Further the department does not see the provisions in conflict because (3)(c)(iv) and (v) specify the requirements for a transport manifest that is printed from METRC, and may not be modified, whereas the requirements in (5) pertain to the transporter's entry of information into METRC upon arrival to the destination.

As to Ms. Hensley's comments about when it is appropriate for the transporter to adjust time on the manifest, the department responds that adjustment should not be necessary because time of arrival at the destination is actual time. Actual time of departure and actual time of arrival can be recorded in METRC without changing the physical transport manifest.

The department also refers Ms. Hensley to Response 12 (which describes the removal of logistical impediments to lessen certain administrative burdens), but the department declines to revise (3)(c)(iv) or (v) although the department remains open to future amendment of the rule as necessity dictates.

COMMENT 17: Ms. Hensley requests clarity whether ARM 42.39.413(9) applies to testing laboratories using their own employees; it appears to not apply. For (10), the language is unclear whether this is only applicable to the wholesale system meant for large quantities of marijuana, and not to testing laboratory samples. Transfer stations are not controlled environments and allow for the opportunity for sample contamination. Lab samples are tamper-proof, sealed after pickup, and a transfer station would have to break that seal, which is a burdensome and unreasonable requirement.

RESPONSE 17: ARM 42.39.417 applies to testing laboratories and (5) of the rule provides that marijuana testing laboratories may transport samples of marijuana and marijuana products for testing in accordance with 16-12-222(4), MCA, and ARM 42.39.413(4) through (15). With the amendment and renumbering of rule sections in ARM 42.39.413, the reference of applicable transporter regulation for marijuana testing laboratories upon adoption will be ARM 42.39.413(3) through (16).

COMMENT 18: Ms. Hensley commented that testing laboratories often receive manifests with 30 test samples directly from a licensee and have been

known to reach 250 test samples. This proposed language seems to require for the entire order to be rejected if one has a discrepancy.

RESPONSE 18: The department directs Ms. Hensley to Response 12 and the removal of proposed ARM 42.39.413(9) and (12) upon adoption which address the rejection of transported product.

COMMENT 19: Ms. Hensley requests clarification, in statute and rule, that laboratory testing facilities are not able to return test samples; and further questions if this proposed rule were to be adopted as written, what is the testing laboratory facility then required to do with the entire rejected order? How can samples be destroyed after rejecting a manifest if the samples are returned to the licensee?

Additionally, the "submitted for testing" status does not change when rejecting a test sample. The samples in METRC still say "submitted for testing" and are locked for all purposes. As a result, in the described scenario, we would see 249 samples in limbo because of one insistent sample.

Finally, for (12)(b), "-5 to -7 grams per pound for drying" is not rational with the amounts that testing laboratories use. If the transfer amount is only 3 grams, it would not be able to be accepted, although it would be within scientific boundaries for quality testing. Many of the testing laboratory samples are only 3-10 grams in total, and we would have to refuse packages for being under the weight limit, even though we could test them adequately.

RESPONSE 19: Similar to Response 18, the department directs Ms. Hensley to Response 12 and the removal of proposed ARM 42.39.413(9) and (12) upon adoption which address the rejection of transported product and also the reconciliation of actual product weight versus the entry on a transport manifest.

As to Ms. Hensley's request for clarification of statute, that would require an act of the Legislature amending 16-12-222, MCA, to add, remove, or clarify any of the stated requirements or public policy goals regarding the transport of marijuana or marijuana products.

COMMENT 20: Mr. Saur commented that current wording of ARM 42.29.413(10) mandates the immediate verification of product received against the transport manifest by count or weight. While compliance is of utmost importance, the practicality of this requirement is concerning, especially for large shipments. Given that businesses have a 72-hour window to complete related paperwork in METRC, it would be helpful to clarify if this timeframe also applies to the physical verification of shipments. This is particularly relevant for shipments that travel long distances, as immediate verification upon receipt can be challenging and may not always be feasible.

RESPONSE 20: The department refers Mr. Saur to the second paragraph of Response 12 and the amendment, upon adoption, of the transport completion deadline. Regarding the "immediate" recording of transported inventory into METRC, the department's expectation is that the receiving licensee enters receipt into METRC without any delay from the time an order is received and accepted, but

in accordance with ARM 42.39.203(8) "All on-premises and in-transit marijuana item inventories must be reconciled in the seed-to-sale tracking system at the close of business each day."

/s/ Todd Olson	/s/ Brendan Beatty
Todd Olson	Brendan Beatty
Rule Reviewer	Director of Revenue

Certified to the Secretary of State March 12, 2024.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I and II and the amendment of ARM 42.39.102, 42.39.123, 42.39.314, 42.39.315, 42.39.316, 42.39.317, 42.39.318, 42.39.319, 42.39.320 pertaining to packaging and labeling of marijuana, marijuana wholesaling, and marijuana advertising	))))))))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On December 22, 2023, the Department of Revenue (department) published MAR Notice No. 42-1073 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1834 of the 2023 Montana Administrative Register, Issue Number 24.

2. On January 19, 2024, the department held a public hearing to consider the proposed adoption and amendment. The following commenters appeared and provided oral testimony to the proposed rulemaking: Brandon Madland, Montana Cannabis Industry Association (MTCIA); Pepper Petersen, Montana Cannabis Guild (Guild); Joanna Barney, Sacred Sun Farms; Sahil Mehta, Euphoria Wellness; Adam Arnold, Collective Elevation; and Elliot Lindsey, Grizzly Pine. The department received written comments from Chris Gatten; Rebecca Rozar, Sacred Sun Farms; Anthony Saur, The Green Bee; Jen Hensley, Hensley & Associates; and Kate Cholewa, MTCIA.

3. The department has amended ARM 42.39.102 and 42.39.315 as proposed.

4. The department has withdrawn the proposed amendments to ARM 42.39.319 from consideration.

5. The department has adopted and amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (42.39.322) LABELING OF SEEDS OR PLANTS (1) Each package of marijuana seeds or plants shall be labeled with the following information:

(a) name ~~and license number~~ of the dispensary selling the seeds or plants and the cultivator that produced the seeds or plants;

(b) net weight or number of individual seeds or number of plants, as applicable;

~~(c) number or plants;~~

(d) and (e) remain as proposed but are renumbered (c) and (d).

AUTH: 16-12-112, 16-12-208, MCA
IMP: 16-12-122, 16-12-208, 16-12-223, MCA

NEW RULE II (42.39.321) WHOLESALE PACKAGE AND LABEL APPLICATIONS (1) through (3) remain as proposed.

(4) A marijuana wholesaler must apply and receive department approval to use all wholesale packaging and labels before distributing any packaged and labeled wholesale products for final sale to customers. Package and label approval is not required for wholesale products that will receive additional processing or will be repackaged and relabeled by another licensee.

AUTH: 16-12-112, 16-12-208, MCA
IMP: 16-12-112, 16-12-208, MCA

42.39.123 ADVERTISING (1) remains as proposed.

(2) "Advertise or advertising" means the publication, dissemination, solicitation, or circulation of visual, oral, or written communication to directly induce any person to purchase or consume marijuana or marijuana products. Advertising includes the promotion of special pricing, ~~events,~~ sales, or discounts on marijuana and marijuana products. Advertising does not include branding, marketing, or packaging and labeling of marijuana and marijuana products or information regarding special pricing, sales, or discounts on display within a licensed premises.

(3) through (11) remain as proposed.

(12) The prohibition in (11)(c) does not prohibit the use of informational pamphlets for dissemination at marijuana trade conferences or the use or distribution of business cards. Nothing in this rule shall be construed to allow the sale ~~or possession~~ of marijuana or marijuana products outside of a licensed premises, including at tradeshows.

(13) remains as proposed.

AUTH: 16-12-112, 16-12-211, MCA
IMP: 16-12-112, 16-12-211, MCA

42.39.314 GENERAL LABELING REQUIREMENTS (1) Labeling requirements apply to marijuana and marijuana products sold from a dispensary to customers and wholesale products intended for final sale to customers from one licensee to another.

(2) remains as proposed.

(3) All marijuana or marijuana products shall be labeled with the following information:

(a) and (b) remain as proposed.

~~(c) the name of the marijuana dispensary that sold the product and the license number or numbers of the cultivator and manufacturer, as applicable;~~

(d) through (i) remain as proposed but are renumbered (c) through (h).

(4) through (9) remain as proposed.

AUTH: 16-12-112, MCA
IMP: 16-12-101, 16-12-112, 16-12-208, 16-12-224, MCA

42.39.316 LABELING OF INGESTIBLE MARIJUANA-INFUSED PRODUCTS (1) In addition to the general labeling requirements set forth in ARM 42.39.314, each package of ingestible marijuana-infused product sold to a customer shall be labeled with the following information:

(a) remains as proposed.

(b) an allergen statement that must declare the presence~~, or absence,~~ of major food allergens in plain language;

(c) through (3) remain as proposed.

AUTH: 16-12-112, MCA
IMP: 16-12-101, 16-12-112, 16-12-208, MCA

42.39.317 LABELING OF NON-INGESTIBLE MARIJUANA-INFUSED PRODUCTS (1) In addition to the general labeling requirements set forth in ARM 42.39.314, each packaging of non-ingestible marijuana-infused products shall be labeled with the following information:

(a) remains as proposed.

(b) an allergen statement that must declare the presence~~, or absence,~~ of major food allergens in plain language; and

(c) through (3) remain as proposed.

AUTH: 16-12-112, MCA
IMP: 16-12-101, 16-12-112, 16-12-208, MCA

42.39.318 LABELING REQUIREMENTS FOR MARIJUANA CONCENTRATES AND EXTRACTS (1) In addition to the general labeling requirements set forth in ARM 42.39.314, each package of marijuana concentrate, including infused marijuana pre-rolls, sold to a customer shall be labeled with the following information:

(a) remains as proposed.

(b) an allergen statement that declares the presence~~, or absence,~~ of major food allergens in plain language unless the marijuana concentrate is not intended to be cooked with, eaten, or otherwise swallowed and digested;

(c) a marijuana facts panel containing the following information:

(i) for marijuana concentrates that require the application of heat before they are administered or consumed:

(A) remains as proposed.

~~(B) the number of servings or doses per package, except for vapes and other smokable marijuana products;~~

(ii) through (3) remain as proposed.

AUTH: 16-12-112, MCA
IMP: 16-12-101, 16-12-112, 16-12-208, MCA

42.39.320 PACKAGING AND LABELING APPLICATIONS, FEES AND DEPARTMENT APPROVAL PROCESSES; EXIT PACKAGE APPROVAL; INITIAL REQUIREMENTS APPLICABLE TO ALL LICENSEES (1) through (16) remain as proposed.

(17) Wholesale label applicants must submit the following fees to the department:

(a) remains as proposed.

(b) ~~$100~~ $25 per label application described in (7)(b) for custom label design; and

(c) ~~$50~~ $10 per package application described in (12)(b).

(18) through (22) remain as proposed.

AUTH: 16-12-112, MCA
IMP: 16-12-112, 16-12-208, 16-12-215, 16-12-224, MCA

6. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: Commenters expressed concern with the proposal in NEW RULE I(1)(a) which would require label information to include a licensee's name and license number. This is a departure from information that is made available pursuant to statute, and the commenters requested the removal of license number from the rule.

RESPONSE 1: The department understands the commenters' concerns and upon adoption has stricken the license number from NEW RULE I(1)(a) and has also removed license number from general label requirements in ARM 42.39.314(3)(c) for consistency within the rules.

COMMENT 2: Mr. Saur commented to NEW RULE I that the rule seems redundant, does not significantly contribute to public health and safety, and dispensaries already provide strain information and potential potency expectations. This additional labeling requirement creates unnecessary work for both businesses and inspectors without clear benefits.

RESPONSE 2: The department disagrees that NEW RULE I is redundant to ARM 42.39.314, because that rule does not currently address packaging and labeling for the sale or transfer of marijuana seeds or plants at all. The department directs Mr. Saur to the statement of reasonable necessity provided for NEW RULE I which is reiterated for the purposes of this response.

COMMENT 3: Ms. Barney requested the department clarify what constitutes a seed that would require labeling to comply with NEW RULE I. Ms. Barney and other commenters requested that the department provide a grace period – of some undescribed period of length – for licensees to obtain labeling that is compliant with

the rule so they may continue, or initiate, the sale of seeds or plants. Ms. Barney notes that many licensees obtain labels in bulk, often from foreign markets, and new labeling requirements take time to order, process, and incorporate into a licensee's business.

Ms. Barney also noted a typographical error in NEW RULE I(1)(c).

RESPONSE 3: The department responds that the definition of a "seed" is unnecessary for labeling because the rule intends to provide a basic requirement for labeling of all marijuana seeds or plants if they are packaged for ultimate sale to the public.

The department also understands that new or revised labeling requirements may necessitate changes in business processes or require additional procurement for licensees, but ensuring accurate marijuana labeling is part of the department's role in public health and safety of the industry and its products.

The department declines to delay implementation of NEW RULE I because it is a business decision when a licensee obtains packaging and labeling from out-of-country vendors versus domestic sources or the licensee purchases labels in such bulk quantities that any change in labeling regulations requires extended amounts of time to transition.

The department appreciates Ms. Barney's observation of the unintended typographical error and (1)(c) has been corrected upon adoption.

COMMENT 4: The department received several comments from multiple commenters who expressed support for NEW RULE II and the general revision of packaging and labeling requirements when applied to wholesale marijuana products.

RESPONSE 4: The department appreciates the comments and thanks the commenters for their feedback.

COMMENT 5: Mr. Petersen provided extensive commentary at the public hearing regarding his ongoing objection to the department's prior adoption of wholesale package and label application requirements in ARM 42.39.320, which preceded the proposal of NEW RULE II.

RESPONSE 5: Mr. Petersen's commentary is outside the scope of the rulemaking.

Further, the Legislature delegated the duty to the department to establish wholesale marijuana packaging and labeling requirements that comply with 16-12-208(8), MCA. Since industry wholesale packaging and labeling practices have normalized since the adoption of ARM 42.39.320, the appropriate response is the adoption of NEW RULE II on the justification provided in the proposal notice.

COMMENT 6: Both Ms. Barney and Mr. Lindsey asked the department to clarify the impact of NEW RULE II on the wholesale sale of bulk marijuana flower/buds versus product that is retail-ready or bulk product which is then sold to a dispensary license for "deli-style" sales to customers.

Ms. Barney questions how transfers between wholesalers in METRC would be impacted by NEW RULE II(4). She also suggested that wholesale transactions would be better served by allowing the product's certificate of analysis to follow the product in a wholesale transaction instead of a wholesale package or label.

RESPONSE 6: Based on the comments and recommendations of Mr. Lindsey and Ms. Barney, the department has amended NEW RULE II(4) upon adoption to provide the increased clarity the commenters seek, and which covers the bulk sale of marijuana on a wholesale basis to a dispensary for "deli-style" sale.

As to Ms. Barney's question about product transfers between wholesalers and suggestion to use a certificate of analysis to follow wholesale product, the department responds that NEW RULE II is not a product tracking rule and the last sentence of NEW RULE II(4), as adopted, provides that package and label approval is not required for wholesale products that will receive additional processing or will be repackaged and relabeled by another licensee.

COMMENT 7: Mr. Madland and Ms. Barney commented about the department's addition of tincture to ARM 42.39.102(12) for edible marijuana-infused product. They requested the department clarify the addition of the product type to the definition was merely for classification and that tincture potency remains governed by statute.

RESPONSE 7: Tincture potency remains governed by 16-12-224, MCA, but the inclusion of tincture as an example of edible marijuana-infused product clarifies tinctures statutory potency variation allowance enacted under HB 229 amendments to 16-12-224, MCA.

COMMENT 8: Ms. Barney commented that the department should revise its proposed amendment to ARM 42.39.102(22) because an analytic label contains more detail than a customer label and would not be generally beneficial when directed for final sale to a customer.

RESPONSE 8: The department appreciates Ms. Barney's suggestion but disagrees to adopt the suggestion on the basis that the amendment causes confusion or is substantively duplicative since the definition supports the analytical labeling requirements found in ARM 42.39.314.

COMMENT 9: Ms. Barney commented her support for the additional definitions proposed in ARM 42.39.102 because definitions add clarity to the regulations and how the department will implement them.

RESPONSE 9: The department appreciates the comments and thanks Ms. Barney for her feedback.

COMMENT 10: Several commenters expressed concern or objection to the department's proposed amendments to ARM 42.39.123 – Advertising.

Mr. Madland and the MTCIA requested clarification that the amended definition of "advertising" in (2) applies to external communication with the public because absent that clarification, the amended definition is overbroad. Ms. Cholewa commented that the regulation of advertising is broken, that the amendments in this rulemaking are not helpful for either the department or licensees, and that a "redo" of the underlying statute is necessary.

Mr. Petersen provided commentary about ARM 42.39.123 that is outside the scope of rulemaking. The commentary was political and asserted that the department's rulemaking is being influenced by legislators desiring the elimination of all advertising for marijuana licensees. Mr. Petersen employed hyperbole to state that the department is "re-defining advertising in an Orwellian fashion" and provided examples of failed legislation relating to advertising as being dispositive of legal insufficiency of advertising regulation.

Similar to the comments of MTCIA, Ms. Barney believes the proposed amendment to (2) lacks necessary clarity because it is too open to interpretation and suggested its removal. Ms. Barney also requested the justification for the removal of only one colloquial term for marijuana from proposed (7) while others remain. Ms. Barney also requested clarification on the amendment of proposed (12) which indicates that possession of marijuana at a trade conference would not be allowable for a registered cardholder.

Mr. Mehta commented objection to the amendments to (2) and stated his position that vague definitions lead to lawsuits. Mr. Mehta continued his commentary outside the scope of the rulemaking and indicated his willingness to engage in litigation to resolve his issues with rulemaking through litigation because". . . .[w]e have lots of attorneys, you only have one."

RESPONSE 10: The department responds to the ARM 42.39.123 comments as follows:

- To Mr. Madland, the MTCIA, Ms. Barney, and Mr. Mehta the restriction in ARM 42.39.123(2) applies to external communications with the public. However, based on the comments, the department has amended (2) upon adoption to improve clarity.
- As to Ms. Cholewa's/MTCIA's opinion about the legal sufficiency or public policy provided in 16-12-211, MCA, the department responds that comments are outside the scope of the rulemaking. The department implements the Legislature's directive in the statute and the amendments to the rule reflect identified issues and improve guidance to licensees about what is allowable, or prohibited, under the law. Should the Legislature change the law, the department will, likewise, implement the revised law as directed.
- To Mr. Petersen, the Legislature provided in 16-12-211(4), MCA, "[T]he department shall adopt rules to clearly identify the activities that constitute advertising that are prohibited under this section." The department also directs Mr. Petersen to the preceding paragraph to Ms. Cholewa's/MTCIA's comments as a partial response. As to the remainder of Mr. Petersen's commentary, the department declines to

respond because the comments are baseless, inflammatory, and outside the scope of rulemaking.

- Ms. Barney is correct that the department removed one colloquial term for marijuana from the list of prohibited vernaculars. The reason for the removal was based on the fact that "ganja" is actually not a colloquial term for marijuana and the department agreed to the removal based on research and a legal opinion from department counsel.
- To Mr. Mehta, the department provided its response (above) to address his concerns about clarity in the amendments to ARM 42.39.123(2). As to the remainder of Mr. Mehta's comments about threatened litigation, the department responds that all of its rulemaking is conducted in compliance with the Montana Administrative Procedure Act (MAPA). If Mr. Mehta believes that any rulemaking was not adopted in substantial compliance with MAPA, then he has recourse in the court system to pursue his complaint, and where the department will assert its defense.

COMMENT 11: Similar to his comments regarding NEW RULE II, Mr. Lindsey commented his belief that general labeling requirements in ARM 42.39.314 do not effectively address the sequence and timing of processing of some product categories and requested the department provide additional clarity. Mr. Lindsey provided examples where edible marijuana product must be labeled because it is "retail ready," but bulk flower sold for deli-style sale does not have the same labeling requirement.

RESPONSE 11: The department refers Mr. Lindsey to the adoption of NEW RULE II, as adopted, and to Response 6 which the department believes satisfies the request for additional clarity being sought.

As for Mr. Lindsey's comments about labeling that addresses the sequence and timing of processing of some product categories, the department responds that ARM 42.39.314 is a general labeling requirements rule. Just as the department proposed and adopted NEW RULES I and II to address those rules' specific labeling requirements, it may be necessary for the department to propose additional labeling guidelines through future rulemaking. If Mr. Lindsey has specific suggestions, the department encourages him to provide them, in writing, for consideration.

COMMENT 12: Ms. Barney commented to the proposed amendment in ARM 42.39.314(3)(d) that the requirement of inclusion of a product's final form testing results is unclear and is redundant to the information accessible through a label's QR code.

RESPONSE 12: The department disagrees that the requirement for final form testing results is unclear and the product's QR code is sufficient since several distinct products may be derived from a given METRC batch and each product may have gone through additional processing which altered its potency or classification.

The disclosure of a final form product's testing results is required in the interest of public health and safety for the buying public.

The department also directs Ms. Barney to the statement of reasonable necessity for the changes to ARM 42.39.314 which is to align the rule with quality assurance testing and sampling requirements found in ARM Title 42, chapter 39, subchapter 6, and the referenced authorities. The department believes that any perceived lack of clarity in the general labeling rule for final form testing result disclosure is reconciled in the testing and sampling requirements.

COMMENT 13: Mr. Madland, the MTCIA, and Ms. Hensley commented their support for the amendments to ARM 42.39.316 requiring actual serving size or dosage and actual milligram package sizes; however, they each requested use of the phrase "to the accuracy required by statute."

Ms. Hensley furthered her comments noting that "actual" is not defined. If left to interpretation, one might say that "actual" meant the accuracy required by statute, but if a scientist were reading it, they may interpret it as down to the molecule. Which one is appropriate? Ms. Hensley implies that the department appears to be interpreting "actual" without the HB 229 prescribed variance, is beyond what the Legislature allows, and is unduly burdensome.

RESPONSE 13: A dispensary licensee must not sell marijuana products that exceed the single package THC concentration limits provided in 16-12-224(8), MCA. While the department agrees with the commenters that House Bill 229 (2023) created an allowable deviation in THC concentration for single packages of +/- 10% when the Legislature amended 16-12-224, MCA, the department disagrees with Mr. Madland and the MTCIA that the suggested phrase is a substantive improvement over the term "actual" and disagrees with Mr. Hensley that "actual" is somehow unclear.

Single package deviation applies to a product's concentration, not to the accuracy of labeling of the product. Actual dosage and actual milligram package sizes are transparent and more informative for the end customer - in the interest of public health and safety – and is not any more burdensome for labeling than ensuring a package falls within the allowable deviation.

Based on this rationale, the department declines to adopt the suggestions into the final rule.

COMMENT 14: Similar to the comments made to NEW RULE I, Mr. Madland, Ms. Barney, and Mr. Gatten commented on the amendments to ARM 42.39.317 that the department provide a grace period for licensees to obtain labeling that is compliant with the rule and also to allow licensees to deplete their existing stock of labels after the rule change. Mr. Gatten asked for a year or more to implement packaging changes outside of potency listings that change from batch to batch.

Mr. Gatten also extended his labeling commentary to include opinions about the impacts of rulemaking on smaller local businesses versus "Mega-cannabis companies."

RESPONSE 14: The department declines to permit licensees to use non-compliant labeling after the adoption of these rules on the same basis as provided in the second and third paragraphs of Response 3.

The department declines an attempt to respond to Mr. Gatten's commentary on "Mega cannabis companies" as they are outside the scope of the rulemaking.

COMMENT 15: Mr. Madland and Ms. Barney commented that the department's proposed addition of allergen statement(s) in the package and labeling rules is confusing because it requires affirmation to the absence of something (i.e., an allergen) and they requested the words' removal from the rule(s).

RESPONSE 15: Based on the comments received, the department has removed the words "or absence" from all allergen statement requirements.

COMMENT 16: Ms. Barney commented that the proposed amendment to ARM 42.39.318(1)(c)(i)(B) to include vapes and other smokable marijuana products required clarification because it does not adequately address whether certain product sub-types (e.g., rosin that is in a dabable form) should be included.

Mr. Saur commented appreciation for the removal of vapes and smokeable products from the requirement, but it is unclear if businesses must reapply for label approval solely to remove this information. Since this is the only change, reapplying seems an unnecessary burden. Can the department provide language that allows for the removal of information that is no longer required without having to reapply for a new approval letter?

RESPONSE 16: Based on Ms. Barney's comments, the department is revising ARM 42.39.318(1)(c)(i) upon adoption to remove (B) on the basis that (1)(c)(i) provides sufficient guidance for fact panel requirements for marijuana concentrates that require the application of heat before they are administered or consumed. The department responds to Mr. Saur that product labels may, and often do, include more information than what is required under rule. Additional label approval to remove previously required information, as a general rule, is not necessary and applies in this instance. However, the department declines a universal statement to that effect because the impact of removing required label information is a fact-dependent analysis that may require proposed rulemaking whether initiated by the department or in response to legislation.

COMMENT 17: The department received several comments, questions, and objections to the proposed amendments to ARM 42.39.319 regarding exit packaging, advertising, and the cost to licensees to comply with the proposed requirements.

RESPONSE 17: Based on the commentary received, and as indicated under paragraph 4 of this notice, the department has withdrawn the proposed amendments to ARM 42.39.319 from consideration; the current form of the rule remains intact.

COMMENT 18: The department received several comments regarding the proposed amendments to ARM 42.39.320, especially the proposed fee structure for wholesale license applications. Mr. Madland and the MTCIA commented that the proposed fees would adversely impact package and label costs despite arguable increases in efficiency for the department. Mr. Petersen echoed these sentiments and questioned why the cost to applicants is increasing. Mr. Mehta commented his belief that the proposed wholesale package and label fees show a disrespect for industry.

Ms. Barney questioned whether the department would require a new application form for wholesale packaging and labeling and also commented that the application costs would be burdensome to licensees. Mr. Saur also questions whether businesses will need to reapply for current labels due to these changes, which could result in further financial burdens.

Mr. Saur questions about how businesses should track wholesale product approvals, especially when they are not directly involved in the application process. Mr. Saur requests guidance on how individual dispensaries can verify the validity of these approvals and a method to track them in a store.

RESPONSE 18: Based on the comments received, the department has reevaluated its wholesale packaging and labeling application process and determined that a reduction in the new wholesale packaging and labeling application fees is warranted. The department has revised ARM 42.39.320(17) upon adoption to reflect new application fee amounts.

The department responds to Ms. Barney that it does not contemplate the need for a separate wholesale packaging and labeling applications form at this time. The department anticipates only a modification to the existing application for an applicant to disclose whether the packaging and labeling is intended for wholesale purposes under NEW RULE II.

The department responds to Mr. Saur that it is a dispensary licensee's business decision through which wholesaler it procures its inventory, and it is likewise a business decision whether a dispensary licensee adequately vets it vendors and products. But potential compliance issues for non-compliant retail product are the responsibility of the retailer. The department also informs Mr. Saur that any wholesaler is able to verify and document through METRC which product packages and labels have received department approval should any such proof be requested by third parties (e.g., retailers) for compliance or wholesale inventory tracking purposes.

/s/ Todd Olson	/s/ Brendan Beatty
Todd Olson	Brendan Beatty
Rule Reviewer	Director of Revenue

Certified to the Secretary of State March 12, 2024.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee

- Department of Agriculture
- Department of Commerce
- Department of Labor and Industry
- Department of Livestock
- Office of the State Auditor (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

Education Interim Committee

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

Children, Families, Health, and Human Services Interim Committee

- Department of Public Health and Human Services

Law and Justice Interim Committee

- Department of Corrections
- Department of Justice

Energy and Telecommunications Interim Committee

- Department of Public Service Regulation

Revenue Interim Committee

- Department of Revenue
- Montana Tax Appeal Board

State Administration and Veterans' Affairs Interim Committee

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

Transportation Interim Committee

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

Environmental Quality Council

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

Water Policy Interim Committee (where the primary concern is the quality or quantity of water)

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

Known Subject	1.	Consult ARM Topical Index. Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.
Statute	2.	Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2023. This table includes notices in which those rules adopted during the period September 22, 2023, through March 8, 2024, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2023, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2023 or 2024 Montana Administrative Register.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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EXECUTIVE BRANCH APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of executive branch appointees and upcoming vacancies on those boards and councils.

In this issue, appointments effective in February 2024 appear. Potential vacancies from April 1, 2024 through April 30, 2024, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of March 1, 2024.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

EXECUTIVE BRANCH APPOINTEES FOR FEBRUARY 2024

Appointee	Appointed By	Succeeds	Appointment/End Date
Board of Personnel Appeals			
Mr. Joseph Halladay	Governor	Stacey Yates	2/5/2024
Columbus			1/5/2025
Qualifications (if required): Full-time employee or elected official of a labor union			
Board of Professional Engineers and Professional Land Surveyors			
Ms. Amy Galt	Governor	Drake	2/6/2024
Kalispell			7/1/2025
Qualifications (if required): Professional Chemical Engineer			
Burial Preservation Board			
Mr. Kevin Askan	Governor	Reappointed	2/12/2024
Pablo			9/1/2027
Qualifications (if required): Confederated Salish and Kootenai Tribe Representative			
Mr. Michael Black Wolf	Governor	Reappointed	2/12/2024
Hays			9/1/2025
Qualifications (if required): Fort Belknap Indian Community Representative			
Mr. Aaron Brien	Governor	New	2/12/2024
Crow Agency			9/1/2025
Qualifications (if required): Crow Nation Representative			

EXECUTIVE BRANCH APPOINTEES FOR FEBRUARY 2024

Appointee	Appointed By	Succeeds	Appointment/End Date
Burial Preservation Board Cont.			
Ms. Skye Gilham	Governor	Reappointed	2/12/2024
Cut Bank			9/1/2027
Qualifications (if required): Physical Anthropologist			
Mr. Andrew LeBrun	Governor	Reappointed	2/12/2024
Red Lodge			9/1/2025
Qualifications (if required): Montana Coroners' Association Representative			
Mr. Thomas Livoti	Governor	Reappointed	2/12/2024
Missoula			9/1/2027
Qualifications (if required): Public Representative			
Mr. John Murray	Governor	Reappointed	2/12/2024
Browning			9/1/2027
Qualifications (if required): Blackfeet Tribe Representative			
Mr. Duane Reid	Governor	Reappointed	2/12/2024
Elmo			9/1/2027
Qualifications (if required): Little Shell Tribe Representative			
Ms. Erika Scheuring	Governor	Reappointed	2/12/2024
Missoula			9/1/2027
Qualifications (if required): Montana State Historical Officer Representative			

EXECUTIVE BRANCH APPOINTEES FOR FEBRUARY 2024

Appointee	Appointed By	Succeeds	Appointment/End Date
Commission on Community Service			
Mr. Zachariah Hawkins	Governor	New	2/6/2024
Helena			7/1/2026
Qualifications (if required):	OPI Representative		
Trauma Care Committee			
Mr. Benjamin Beasley	Governor	Gum	2/12/2024
Billings			11/1/2027
Qualifications (if required):	Member of American College of Emergency Physicians, Montana Chapter		
Mr. Christopher Benton	Governor	Reappointed	2/12/2024
Red Lodge			11/1/2024
Qualifications (if required):	Central Region Trauma Advisory Council		
Ms. Michelle Cole	Governor	Raiser	2/12/2024
Missoula			11/1/2027
Qualifications (if required):	Western Region Trauma Advisory Council		
Ms. Theresa Madril	Governor	Bonanini	2/12/2024
Havre			11/1/2027
Qualifications (if required):	Nurse or Physician representative of the Indian Health Service		

EXECUTIVE BRANCH APPOINTEES FOR FEBRUARY 2024

Appointee	Appointed By	Succeeds	Appointment/End Date
Trauma Care Committee Cont.			
Dr. Barry McKenzie	Governor	Reappointed	2/12/2024
Billings			11/1/2027
Qualifications (if required):	Presiding Officer, member of Montana Committee of Trauma of American College of Surgeons		
Ms. Lysa Mikes	Governor	Engan	2/12/2024
Helena			11/1/2027
Qualifications (if required):	Central Region Trauma Advisory Council		
Ms. Camille Ratzburg	Governor	Fortin	2/12/2024
Shelby			11/1/2024
Qualifications (if required):	Member of the Montana Trauma Coordinators		
Mr. Jeremy Virts	Governor	Reappointed	2/12/2024
Great Falls			11/1/2027
Qualifications (if required):	Member of Montana Emergency Medical Services Association		
Mr. Don Whalen	Governor	Reappointed	2/12/2024
Missoula			11/1/2027
Qualifications (if required):	Employed by a Montana private ambulance operator		

EXECUTIVE BRANCH VACANCIES – APRIL 1, 2024 THROUGH APRIL 30, 2024

Board/Current Position Holder	Appointed By	Term End
Board of Clinical Laboratory Science Practitioners		
Mr. Matthew Charles A. Aakre, Helena	Governor	4/1/2024
Qualifications (if required): Clinical laboratory science practitioner		
Board of Dentistry		
Ms. Diane Klemann, Billings	Governor	4/1/2024
Qualifications (if required): Dental Hygienist		
Dr. Paul Sims, Butte	Governor	4/1/2024
Qualifications (if required): Dentist		
Board of Optometry		
Dr. Mindy Sterner Leach, Great Falls	Governor	4/1/2024
Qualifications (if required): Registered Optometrist		
Board of Real Estate Appraisers		
Mr. Steven Hall, Missoula	Governor	4/30/2024
Qualifications (if required): Certified real estate appraiser		
Ms. Patti Dundas, Billings	Governor	4/30/2024
Qualifications (if required): Public member		
Family Support Services Advisory Council		
Ms. Laura McKee, Billings	Governor	4/1/2024
Qualifications (if required): Parent Representative		

EXECUTIVE BRANCH VACANCIES – APRIL 1, 2024 THROUGH APRIL 30, 2024

Board/Current Position Holder	Appointed By	Term End
Family Support Services Advisory Council Cont.		
Ms. Laura Christiaens, Valier	Governor	4/1/2024
Qualifications (if required): Public or Private Provider of Early Intervention Service		
Ms. Kathleen Rich, Helena	Governor	4/1/2024
Qualifications (if required): Early Head Start/Head Start Representative		
Ms. Karen Thornton, Great Falls	Governor	4/1/2024
Qualifications (if required): Public or Private Provider of Early Intervention Service		
Mrs. Abigail Harris, Forsyth	Governor	4/1/2024
Qualifications (if required): Parent Representative		
Ms. Meghan Peel, Helena	Governor	4/1/2024
Qualifications (if required): State Agency Representative Responsible for Children's Mental Health Services		
Ms. Nicole Goeddel, Missoula	Governor	4/1/2024
Qualifications (if required): Parent Representative		
Ms. Brandi Loch, Great Falls	Governor	4/1/2024
Qualifications (if required): State Agency Representative Responsible for Foster Care		
Ms. Karen Underwood, Billings	Governor	4/1/2024
Qualifications (if required): Public or Private Provider of Early Intervention Service		
Ms. Breanne Main, Harlem	Governor	4/1/2024
Qualifications (if required): Parent Representative		

EXECUTIVE BRANCH VACANCIES – APRIL 1, 2024 THROUGH APRIL 30, 2024

Board/Current Position Holder	Appointed By	Term End
Family Support Services Advisory Council Cont.		
Ms. Susan Brown, Helena	Governor	4/1/2024
Qualifications (if required): State Agency Representative Responsible for the Regulation of Private Insurance		
Rep. Sue Vinton, Billings	Governor	4/1/2024
Qualifications (if required): Legislative Representative		
Ms. Kalli Decker, Bozeman	Governor	4/1/2024
Qualifications (if required): Personnel Preparation Representative		
Ms. Susan Wensel, Winston	Governor	4/1/2024
Qualifications (if required): Provision of Payment for Early Intervention Agency Representative		
Ms. Madison Diederichs, Helena	Governor	4/1/2024
Qualifications (if required): Responsible for Child Care Agency Representative		
Ms. Lucy Beltz, Columbia Falls	Governor	4/1/2024
Qualifications (if required): State Education Agency Responsible for Preschool Services to Children with Disabilities		
Ms. Jade Atkinson, Helena	Governor	4/1/2024
Qualifications (if required): State Medicaid and CHIP Program Representative		
Ms. Serena Wright, Helena	Governor	4/1/2024
Qualifications (if required): Office of the Coordination of Education for Homeless Children and Youth Representative		

EXECUTIVE BRANCH VACANCIES – APRIL 1, 2024 THROUGH APRIL 30, 2024

Board/Current Position Holder	Appointed By	Term End
Public Employees' Retirement Board		
Ms. Terri Lynn Hogan, Helena	Governor	4/1/2024
Qualifications (if required): Public Employee, Active member of the public retirement system defined contribution plan		
Mr. Aaron L. Pratt, Helena	Governor	4/1/2024
Qualifications (if required): Public Employee, Active Member of the Public Retirement System		
Ms. Margaret Jean Peterson, Anaconda	Governor	4/1/2024
Qualifications (if required): Experience in investment management, counseling, or financial planning		
Mr. Marty Tuttle, Clancy	Governor	4/1/2024
Qualifications (if required): Active member of Public Retirement System, Defined Contribution Plan		

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CHRISTI JACOBSEN
SECRETARY OF STATE

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